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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 800)

Supreme Court of the United States

OCTOBER TERM, 1948

No. 279

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FILED SEPTEMBER 16, 1948.

SUPREME COURT OF THE UNITED STATES

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VOL. I

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[fol. 82] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil Action No. 6159-H

UNITED STATES OF AMERICA, Plaintiff,

v.

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC., Defendants

COMPLAINT—Filed January 2, 1947

The United States of America, seeking equitable relief, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants, Standard Oil Company of California and Standard Stations, Inc., and complains and alleges as follows:

Jurisdiction and Venue

1. This Complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, as amended (26 Stat. 209, 15 U. S. C., §4) entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, and under Section 15 of the Act of Congress of [fol. 83] October 15, 1914, as amended (38 Stat. 736, 15 U. S. C. §25) commonly known as the Clayton Act, in order to prevent and restrain continuing violations, as hereinafter alleged, of Section 1 of the Sherman Antitrust Act, and of Section 3 of the Clayton Act.

2. Defendants Standard Oil Company of California and Standard Stations, Inc. have offices, transact business, and are found within the Central Division of the Southern District of California. The alleged violations of law hereinafter described have been and are being carried out in part within the said Division and District, and the interstate commerce in petroleum products and automotive accessories

herein involved, as hereinafter described, is carried on in part within the said Division and District.

Defendants

3. Standard Oil Company of California, a corporation organized and existing under the laws of the State of Delaware, with offices and principal place of business in San Francisco, California, is hereby made a defendant herein. Standard Oil Company of California is engaged in the business of producing, transporting, refining, and marketing petroleum and petroleum products principally in the States of California, Oregon, Washington, Arizona, Nevada, New Mexico, Idaho and Utah. It is sometimes hereinafter referred to as "defendant Standard."

4. Standard Stations, Inc., a corporation organized and existing under the laws of the State of Delaware, with offices and principal place of business in San Francisco, California, is made a defendant herein. Standard Stations, Inc. is a wholly-owned subsidiary of Standard Oil Company of California and is engaged in the business of managing service stations in California, Washington, Oregon, Arizona, Idaho, Nevada and Utah.

Definitions

5. The term "petroleum products," as used herein, refers to those products obtained or manufactured from crude oil [fol. 84] by various processes and sold or used as a fuel or lubricant for automotive vehicles, together with miscellaneous oils and compounds derived from petroleum and designated for various special uses.

6. The term "automotive accessories," as used herein, refers to replacement parts and articles other than petroleum products used in servicing or repairing automotive vehicles and includes tires, tubes, batteries, spark plugs, oil filters, oil filter cartridges, fan belts, battery cables, auto lamp bulbs, fuses, windshield wipers and blades, tire repair and vulcanizing kits, anti-freeze preparations, tire chains, waxes and polishes, spot lights and other like items.

7. The term "automobile" or "automotive," as used herein, includes trucks, tractors, buses, farm and manufacturing implements and motors.

8. The term "service station," as used herein, refers to a retail outlet dealing in and dispensing petroleum products

and/or automotive accessories and operated by an Independent Service Station Operator or by a Company Employee-Operator.

9. The term "Independent Service Station Operator," as used herein, refers to the operator of a service station which is not operated by a producer-wholesaler of petroleum products as an adjunct of its ordinary course of business. It includes the operator of a service station with which a producer-wholesaler may be the owner or senior interest holder of the property leased by such operator.

10. The term "Company Service Station," as used herein, refers to a service station operated or managed directly by defendant Standard or by its wholly-owned subsidiary Standard Stations, Inc., through a Company Employee-Operator.

11. The term "Garage Operator," as used herein, refers to the operator of a place of sale for automobiles or to the [fol. 85] operator of a place of repair for automobiles, in connection with which the retailing of petroleum products and/or automotive accessories is carried on.

12. The term "retail outlet," as used herein, refers to a service station or garage in connection with which the retailing of petroleum products and/or automotive accessories is carried on, and which is operated either by an Independent Service Station Operator, a Company Employee-Operator or a Garage Operator.

13. The term "sponsored products," as used herein, refers to those petroleum products and/or automotive accessories not manufactured or produced by defendant Standard, but sold and distributed by defendants Standard and Standard Stations, Inc. or contracted or arranged for sale by said defendants to and through retail outlets.

14. The term "Western area," as used herein, refers to all of the territory within the States of California, Oregon, Washington, Arizona, Nevada, New Mexico, Idaho and Utah.

Nature of Trade and Commerce

15. Defendant Standard has large petroleum holdings throughout fields located in California, and important holdings and interests in the oil-producing fields of Texas, New

Mexico, Colorado, Mississippi and Louisiana. Approximately 85 percent of the crude oil currently produced or bought for marketing by defendant Standard is produced from wells located in California and approximately 15 percent is produced in the other designated states. The crude oil so obtained is transported, by defendant Standard, to approximately twenty natural gasoline plants located in several states, to three major refineries located at Richmond, El Segundo and Segura, California, and to two smaller refineries in Texas. Petroleum products produced [fol. 86] or processed thereat are sold and distributed in interstate commerce principally to retail outlets for resale to consumers and, to a lesser extent, by direct sale to consumers in the Western area.

16. Defendants Standard and Standard Stations, Inc. distribute and sell or arrange for the distribution and sale to retail outlets of a number of petroleum products and automotive accessories not produced or manufactued by defendant Standard. These said products, known as sponsored products, are manufactured and produced by various concerns and are generally shipped in interstate commerce from factories and processing points located in states other than those in which defendant Standard operates to Western area retail outlets designated by it or to warehouses maintained by it within the Western area from which and through which they are distributed to retail outlets. The said sponsored products are then sold at retail to consumers within the Western area by retail outlets under brand names owned, controlled or sponsored by defendant Standard.

17. Service stations are customarily located at important highway intersections and at other readily accessible roadside locations on streets and arteries which carry extensive automotive traffic. The selection of a service station site is normally made only after thorough analysis of its suitability for supplying the needs of motorists. Since the number of service station sites which will return reasonable profits to their operators in any given area is limited, it is recognized that established operators of favorably situated service stations occupy positions of substantial impregnability against competitive invasion of their respective areas by other operators.

18. Defendants Standard and Standard Stations, Inc. sought for many years, within the Western area, to lease,

take title to and/or to enter into contractual relationships with operators of such favorably located service station sites.

[fol. 87] 19. Prior to 1926, in the initial competition in the securing of such sites, defendants Standard and Standard Stations, Inc. acquired title to many such properties. In or about 1926, defendants began to acquire retail outlets by obtaining leases of such properties. The properties so leased were subleased to Independent Service Station Operators who were then licensed to sell defendant Standard's petroleum products and sponsored products exclusively. This method of acquiring retail outlets was termed the "lease and license" system.

20. Beginning in or about 1931, another method of acquiring retail outlets, known as the "lease and agency" system, was developed. Under this method, operators were constituted as agents of defendant Standard for the exclusive distribution of its petroleum products and sponsored products.

21. Beginning in or about 1936, defendant Standard adopted an additional method of acquiring or operating retail outlets known as the "Iowa plan." Under this plan defendant Standard sought to eliminate expenses incident to chain store tax laws, social security laws and increasing unionization trends by expressly avoiding an agency relationship with its operators. In substance, under the Iowa plan, operators were constituted ostensibly as independent entrepreneurs and given leases conditioned on their exclusive handling of defendant Standard's petroleum products and sponsored products. This plan supplanted the "lease and agency" system described in Paragraph 20.

22. As a result of the several said methods of acquiring and maintaining control of retail outlets, defendant Standard now owns or leases from the owners thereof approximately 4668 service stations in the Western area. Of this number, approximately 1112 are directly operated as Company Service Stations, and deal exclusively in defendant Standard's petroleum products and sponsored products, and approximately 3556 of said service stations are leased [fol. 88] to independent operators on the condition that said operators shall deal exclusively in defendant Standard's petroleum products and sponsored products.

23. In addition to the 4668 service stations referred to in Paragraph 22 hereof, defendant Standard has entered into contractual relationships with the operators of approximately 3332 service stations and garages in the Western area, under which said operators are required to deal exclusively, in defendant Standard's petroleum products and sponsored products. By reason of said acquisitions, leases and contractual relationships, defendant Standard has acquired the exclusive right to supply approximately 8000 service stations and garages in the Western area.

24. Defendant Standard Stations, Inc. has negotiated many of said agreements and arrangements for and on behalf of defendant Standard, and has executed many of said agreements in the name and on behalf of defendant Standard.

25. The said retail outlets so acquired and controlled by defendants Standard and Standard Stations, Inc. constitute a substantial portion of all of the favorably situated retail outlets for petroleum products and automotive accessories available to motorists within the Western area. Notwithstanding the fact that many motorists who prefer defendant Standard's brands of gasoline over those of other producer-wholesalers have brand preferences for lubricants and automotive accessories other than those manufactured or sponsored by defendant Standard, the said retail outlets, as aforesaid, are permitted to offer and sell at retail only such petroleum products and automotive accessories as are manufactured or sponsored by defendant Standard.

26. Numerous manufacturers and producers of petroleum products and automotive accessories located in states outside the Western area, other than those producers and manufacturers whose products are sponsored by defendant Stand-
[fol. 89] ard, are prepared to and have attempted to sell their respective brands of petroleum products, tires, tubes, batteries, spark plugs, waxes, polishes and other automotive accessories, to retail outlets acquired and controlled by said defendants within the Western area. The said retail outlets, however, by reason of the obligations of their contractual and other relationships with said defendants, have not been permitted to purchase such products and the said other producers and manufacturers have accordingly been deprived of the patronage of a substantial portion of all of

the retail outlets for petroleum products and automotive accessories within the Western area.

Offenses Charged

27. Defendants Standard and Standard Stations, Inc. continuously, for at least fifteen years prior to the date of the filing of this Complaint, have violated and are now violating Section 1 of the Act of Congress of July 2, 1890, as amended, 26 Stat. 209, 15 U. S. C. 1, commonly known as the Sherman Act, and Section 3 of the Act of Congress of October 15, 1914, as amended, 38 Stat. 731, 15 U. S. C. 14, commonly known as the Clayton Act, in that they have executed and entered into certain written exclusive supply contracts entitled "Dealer Agreements," "Dealer Agreements TBA," "Petroleum Products and Equipment Agreements," "Distributor Agreements" and "Subleases," and into oral exclusive supply agreements, by and between themselves and approximately 6,900 Independent Service Station Operators and numerous additional Garage Operators in the Western area, which said written contracts and oral agreements are in unreasonable restraint of, and substantially lessen competition in, the herein described interstate trade and commerce in petroleum products and automotive accessories. The said written contracts and oral agreements will [fol. 90] continue in effect unless the relief hereinafter prayed for is granted.

28. The said "Dealer Agreements," which are now in full force and effect, provide that the operators party thereto shall purchase exclusively from defendant Standard all of their respective requirements of petroleum products used and sold and bought to be used and sold on the premises described in such Agreements. Such Agreements further provide, among other things, that the petroleum products referred to therein shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by defendants in the vicinity of operator's station. Operator further agrees not to store, handle, distribute or sell any other brand or brands of petroleum products at or from his said station.

29. The said "Dealer Agreement TBA" and the said "Distributor Agreements," which are now in full force and effect, provide, among other things, that the operators party thereto shall purchase exclusively from defendant Standard

or Standard Stations, Inc. all of the said operators' respective requirements of petroleum products, tires, tubes, batteries and other lines of automotive accessories distributed by or through defendants Standard and Standard Stations, Inc., used and sold, or bought to be used and sold by the said operators on the premises described in such Agreements.

30. The said "Petroleum Products and Equipment Agreements," which are now in full force and effect, provide that the operators party thereto shall purchase exclusively from defendant Standard or Standard Stations, Inc. all of their respective requirements of petroleum products used and sold, and bought to be used and sold on the premises described in such Agreements. The said contracts further provide that in consideration therefor, defendant Standard or Standard Stations, Inc. shall, without charge, install and retain title to certain specified equipment and facilities to [fol. 91] be used on the premises occupied by the said operators. Some of the said contracts further provide that upon expiration, said defendants shall tender Bills of Sale for the said installed equipment and facilities to the operators party thereto, if the said operators have complied with all of the terms of the said contracts and have not terminated such contracts prior thereto.

31. The said "Subleases" which are now in full force and effect, provide that the operators party thereto shall lease certain premises from defendants Standard and Standard Stations, Inc. and on such leased premises the said operators shall deal in and sell only such petroleum products as have been purchased from defendant Standard or Standard Stations, Inc. Some of the said Subleases provide that the operators party thereto shall have the right to occupy the premises leased only for the sale and distribution of such petroleum products and other merchandise as shall have been purchased from said defendants and that the said operators shall not store, handle, sell or distribute any petroleum products or merchandise of any description other than that sold or distributed by said defendants.

32. The said oral agreements entered into by and between defendants Standard and Standard Stations, Inc. and the said Independent Service Station Operators and Garage Operators have consisted and now consist in agreements that

said defendants shall sell and fix prices, discounts and rebates on sales of petroleum products and automotive accessories on the condition, agreement and understanding that the said operators who purchase such products shall agree to use, handle and resell only those petroleum products and automotive accessories sold or sponsored by defendant Standard.

33. Defendants Standard and Standard Stations, Inc. have persuaded, induced and influenced the said Independ- [fol. 92] ent Service Station Operato-s and Garage Operators to enter into the aforesaid written contracts and oral agreements by divers means and methods, including among others, the following:

(a) by lending money to the said Independent Service Station Operators and Garage Operators at rates of interest below current rates and without interest charges;

(b) by giving money to and by forgiving portions of loans receivable from the said Independent Service Station Operators and Garage Operators;

(c) by buying equipment from the said Independent Service Station Operators and Garage Operators and reselling the same said equipment to the same said parties at prices less than the purchase prices;

(d) by selling new equipment to the said Independent Service Station Operators and Garage Operators at prices below cost to defendant Standard;

(e) by furnishing new equipment to Independent Service Station Operators and Garage Operators without charge,

all on the condition that the said Independent Service Station Operators and Garage Operators shall agree to deal exclusively in petroleum products sold by defendant Standard and, in many instances, exclusively in automotive accessories sponsored or distributed by defendants Standard and Standard Stations, Inc.

Effects of the Contracts

34. The aforesaid contracts have had the effects, as intended by defendants Standard and Standard Stations, Inc., of

(a) eliminating competition between defendants Standard and Standard Stations, Inc. and other producers and manufacturers of petroleum products of like utility and quality for the patronage of a substantial [fol. 93] portion of the retail outlets for such products in the Western area,

(b) eliminating competition between manufacturers and producers of defendants Standard's and Standard Stations, Inc.'s sponsored products and other manufacturers and producers of products of like utility and quality for the patronage of a substantial portion of the retail outlets for such products in the Western area,

(c) depriving a substantial portion of the retail outlets for petroleum products and automotive accessories within the Western area of the opportunity of purchasing such products from producers and manufacturers of their own selection,

(d) depriving a substantial portion of the retail outlets for petroleum products and automotive accessories within the Western area of the opportunity of purchasing petroleum products and automotive accessories at prices determined by free and open competition among the producers and manufacturrers of such products,

(e) securing to defendants Standard and Standard Stations, Inc. a monopoly of the petroleum products and automotive accessories patronage in a substantial portion of the retail outlets for such products within the Western area,

and have had the effect thereby of restraining and substantially lessening competition in the interstate trade and commerce in petroleum products and automotive accessories hereinabove described.

[fol. 94] Prayer

Wherefore the plaintiff prays:

1. That the Court adjudge and decree that defendants Standard and Standard Stations, Inc., have entered into contracts which unreasonably restrain interstate trade and commerce in petroleum products and automotive accessories, in violation of Section 1 of the Sherman Act.

2. That the Court adjudge and decree that defendants Standard and Standard Stations, Inc. have substantially lessened and restrained competition in petroleum products and automotive accessories, in violation of Section 3 of the Clayton Act.

3. That the exclusive supply provisions in the written contracts and oral agreements between defendants Standard and Standard Stations, Inc. and Independent Service Station Operators and Garage Operators, more particularly described hereinabove, be declared void and of no effect, and in unreasonable restraint of and as substantially lessening competition in interstate commerce in petroleum products and automotive accessories and in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act.

4. That defendants Standard and Standard Stations, Inc. and their officers, directors, agents, representatives, and all persons and corporations acting or claiming to act on their behalf, be perpetually enjoined from entering into or enforcing any contract, agreement, or understanding, express or implied, with any Independent Service Station Operator, or Garage Operator, or from inducing or compelling, or attempting to induce or compel, by any means whatever, any Independent Service Station Operator, or Garage Operator, to enter into any contract, agreement, or understanding which provides:

(a) That the Independent Service Station Operator or Garage Operator shall secure all of his requirements [fol. 95] of petroleum products from defendant Standard, or shall not handle the petroleum products of any other company;

(b) That the Independent Service Station Operator, or Garage Operator shall secure all of his requirements of any one or more types of automotive accessories

from or through defendants Standard and Standard Stations, Inc., or will not handle accessories competitive with those distributed or sponsored by defendants Standard and Standard Stations, Inc.;

(c) That the sale of any petroleum product or automotive accessory to any Independent Service Station Operator, or Garage Operator shall be conditional on the sale of other petroleum products or automotive accessories.

5. That plaintiff have such other and further relief as the nature of the case may require and the Court may deem proper in the premises, and that plaintiff recover the costs of this suit.

6. That pursuant to Section 5 of the Sherman Antitrust Act, an order be made and entered herein requiring the defendants named herein to be brought before the Court in this proceeding as parties defendant, and directing the Marshal of the Southern District of California to serve a summons upon them, and demanding that they appear herein and answer the allegations contained in this Complaint and thereafter abide by and perform such orders and decrees as the Court may make and enter.

[fol. 96] Dated Jan. 2, 1948.

William C. Dixon, Special Assistant to the Attorney General. W. Alan Thody, Special Assistant to the Attorney General. Tom C. Clark, Attorney General. Wendell Berge, Assistant Attorney General. Holmes Baldridge, Special Assistant to the Attorney General. Richard B. O'Donnell, Special Assistant to the Attorney General. James M. Carter, United States Attorney.

[fol. 97] IN THE DISTRICT COURT OF THE UNITED STATES

[File endorsement omitted]

[Title omitted]

NOTICE OF HEARING OF MOTIONS FOR A STAY OF PROCEEDINGS, (AND IN THE ALTERNATIVE) TO DISMISS, (AND IN THE ALTERNATIVE) TO STRIKE FROM COMPLAINT, FOR A MORE DEFINITE STATEMENT OR BILL OF PARTICULARS, AND FOR INSPECTION, TOGETHER WITH SAID MOTIONS, AND AFFIDAVITS AND POINTS AND AUTHORITIES SUPPORTING THE SAME—Filed April 3, 1947

To Plaintiff and Its Attorneys:

Please take notice that on June 2, 1947, at the hour of 10:00 A. M., or as soon thereafter as defendants' counsel [fol. 98] may be heard, defendants will move the above entitled Court in the courtroom of the Honorable Campbell E. Beaumont, Judge of said Court, in the United States Post Office and Court House Building at Los Angeles, California, as follows:

Defendants will present and move in accordance with Motion No. 1 annexed hereto.

If Motion No. 1 be granted, defendants will move for an order permitting defendants to defer making the remaining motions annexed hereto until such time as proceedings herein shall be no longer stayed.

If Motion No. 1 be denied, defendants will present and move in accordance with Motions Nos. 2 and 3 annexed hereto.

If Motions Nos. 2 and 3 be denied, defendants will present and move in accordance with Motions Nos. 4, 5 and 6, Motion No. 6 being presented only in the event that Motion No. 5 is denied with respect to particulars L, M, N, O and P therein.

The making of any of said Motions shall be without prejudice to the making of any other Motion and without prejudice to rights which defendants would otherwise have by reason of a denial of any Motion.

Following the presentation of said motion or motions, defendants severally may move for such order with respect to an extension of the time within which defendants are

required to answer as may then appear necessary and appropriate for the protection of defendants.

April 3, 1947.

Lawler, Felix & Hall, John M. Hall. By John M. Hall, Attorneys for defendants.

[fol. 99] MOTION No. 1

(for a stay of proceedings)

Defendants severally move the Court to stay further proceedings in this cause until a final termination of or a final determination of the issues in that certain civil action pending now and at the time of the commencement of this action in the District Court of the United States for the District of Columbia, being No. 8524 and entitled "United States of America, Plaintiff, vs. American Petroleum Institute, et al., Defendants," wherein this plaintiff is plaintiff, and these defendants are defendants.

This motion is made on the Ground that the charges made and the relief sought by the complaint herein are substantially the same as certain of the charges made and certain of the relief sought by the complaint against the defendants herein in said action No. 8524, as will more fully appear from the affidavit annexed hereto, marked Affidavit A.

This motion is supported by Affidavit A, and by Points and Authorities, annexed hereto.

[fol. 100] MOTION No. 2

(to dismiss)

Defendants severally move the Court to dismiss this action upon the ground that upon the principle of forum non conveniens jurisdiction of this action should not be assumed by this Court because the witnesses, papers and documents to which resort must be had for the proof required herein are all permanently located at the headquarters offices of defendants at 225 Bush Street, in the City and County of San Francisco, within the Northern District of California, and that by reason thereof substantial burden and hardship will be imposed upon defendants if jurisdiction of this cause is assumed by this Court.

This motion is supported by Affidavit B and is made upon the authority of the decision of the Supreme Court of the United States in *Gulf Oil Corp.* v. *Gilbert*, — U. S. —; No. 93—October Term, 1946, decided March 10, 1947.

[fol. 101] MOTION No. 3

(to dismiss)

Defendants severally move the Court to dismiss this action upon the following grounds:

(A) Because the complaint herein fails to state a claim against either of the defendants upon which relief can be granted in that no facts are alleged therein showing that there was any unreasonable restraint of or substantial lessening of competition or tendency to create a monopoly in interstate trade or commerce or that the contracts, agreements and subleases referred to were made in the course of interstate trade or commerce.

(B) Because the complaint herein shows that the Court lacks jurisdiction over the subject matter alleged in said complaint in that such jurisdiction is made to depend upon violations of section 1 of the Sherman Act (15 U. S. C. A. 1) and section 3 of the Clayton Act (15 U. S. C. A. 14), and no facts are alleged in the complaint showing that there was any unreasonable restraint of or substantial lessenting of competition or tendency to create a monopoly in the interstate trade or commerce or that the contracts, agreements and subleases referred to were made in the course of interstate trade or commerce.

This motion is made under Rule 12(b) of the Federal Rules of Civil Procedure.

This motion is supported by Points and Authorities, annexed hereto.

[fol. 102] MOTION No. 4

(to strike from complaint)

Defendants severally move the Court to strike from the complaint:

(A) All of paragraph 33 of the complaint.

(B) The words "*and other relationships*" appearing in the last sentence of paragraph 26 of the complaint, which sentence reads:

> "The said retail outlets, however, by reason of the obligations of their contractural and other relationships with said defendants, have not been permitted

to purchase such products and the said other producers and manufacturers have accordingly been deprived of the patronage of a substantial portion of all of the retail outlets for petroleum products and automotive accessories within the Western area."

This motion is made under Rule 12(f) of the Federal Rules of Civil Procedure on the ground that the matters sought to be stricken are redundant or immaterial or impertinent.

This motion is supported by Points and Authorities, annexed hereto.

[fol. 103] MOTION NO. 5

(for a more definite statement, or bill of particulars)

Defendants severally move the Court that plaintiff be ordered to furnish a more definite statement, or, in the alternative, a bill of particulars, as to the following matters stated in the complaint:

(A) State what is meant by the "Iowa plan," referred to in the first sentence of par. 21, and what that "plan" was.

(B) State whatis meant by the allegation in the third sentence of paragraph 21 that under the "Iowa plan, *operators were constituted ostensibly as independent entrepreneurs,*" and the facts which it is alleged produced that result.

(C) State what is meant by the terms "*favorably situated service stations*" and "*favorably situated retail outlets,*" as alleged in the third sentence of paragraph 17 and the first sentence of paragraph 25 respectively, and the facts which differentiate a "favorably situated" station or outlet from one not so situated.

(D) State what is meant by "*controlled*" in the first sentence of paragraph 25, and the facts upon which the pleader bases this conclusion.

(E) State what is meant by and what in fact comprises a "*substantial portion*" of all favorably situated retail outlets, as alleged in the first sentence of paragraph 25, and the facts upon which the pleader bases this conclusion.

(F) State what is meant by "*permitted to offer and sell at retail*" in the second sentence of paragraph 25 and the facts upon which the pleader bases this conclusion.

(G) State what is meant by "*controlled*" in the first [fol. 104] sentence of paragraph 26, and the facts upon which the pleader bases this conclusion.

(H) State what is meant by "*and other relationships*" and what in fact is comprised by this allegation in the second sentence of paragraph 26 (Definite statement or particulars as to this is sought only in the event the motion to strike this language is denied.)

(I) State what is meant by "*permitted to purchase*" in the second sentence of paragraph 26, and the facts upon which the pleader bases this conclusion.

(J) State what is meant by and what in fact comprises a "*substantial portion*" of all of the retail outlets, as alleged in the second sentence of paragraph 26, and the facts upon which the pleader bases this conclusion.

(K) State how and in what manner "*said written contracts and oral agreements are in unreasonable restraint of, and substantially lessen competition*" as alleged in paragraph 27, and the facts upon which the pleader bases this conclusion.

(L) Set forth in full the contents of the form of "*Dealer Agreement*" which is referred to in paragraph 28 and which paragraph 27 alleges was executed and entered into in violation of the Sherman and Clayton Acts.

(M) Set forth in full the contents of the form of "*Dealer Agreement TBA*" which is referred to in paragraph 29 and which paragraph 27 alleges was executed and entered into in violation of the Sherman and Clayton Acts.

(N) Set forth in full the contents of the form of "*Distributor Agreement*" which is referred to in paragraph 29 and which paragraph 27 alleges was executed and entered into in violation of the Sherman and Clayton Acts.

[fol. 105] (O) Set forth in full the contents of the form of "*Petroleum Products and Equipment Agreement*" which is referred to in paragraph 30 and which paragraph 27 alleges

was executed and entered into in violation of the Sherman and Clayton Acts.

(P) Set forth in full the contents of the form of "*Sub-lease*" which is referred to in paragraph 31 and which paragraph 27 alleges was executed and entered into in violation of the Sherman and Clayton Acts.

(Q) State the names of the Operators with whom the "*oral agreements*" referred to in paragraph 32 were made and the dates of such agreements, or other specific facts with reference thereto which will enable defendants to identify the particular agreements which paragraph 27 alleges were entered into in violation of the Sherman and Clayton Acts.

(R) State what is meant by and what in fact comprises the "*substantial portion*" of the retail outlets referred to in sub-paragraphs (a), (b), (c), (d) and (e) of paragraph 34, and the facts upon which the pleader bases these conclusions.

(S) State how and in what manner the "contracts" referred to in paragraph 34 have had the effect of "*restraining and substantially lessening competition in the interstate trade and commerce in petroleum products and automotive accessories,*" and the facts upon which the pleader bases this conclusion.

(T) State the names of the "*manufacturers and producers of petroleum products and automotive accessories*" who, it is alleged in paragraph 26, "are prepared to and have attempted to sell" their products to retail outlets "acquired and controlled by said defendants within the Western area," and the time or times when such attempt or attempts were made.

[fol. 106] This motion is made under Rule 12 (e) of the Federal Rules of Civil Procedure on the grounds that the matters hereinbefore stated are not alleged with sufficient definiteness or particularity to enable defendants properly to prepare their responsive pleading or to prepare for trial, and that by reason of uncertainty with respect to plaintiff's allegation of such matters defendants are unable to admit or deny the same or formulate or state their defenses thereto.

This motion is supported by Points and Authorities, annexed hereto.

[fol. 107] MOTION NO. 6

(for inspection)

Defendants severally move the Court for an order requiring plaintiff to produce and to permit defendants to inspect and to copy each of the following documents:

(A) The "Dealer Agreement" form of contract which is referred to in paragraph 28 of the complaint and which paragraph 27 of the complaint alleges was executed and entered into in violation of the Sherman and Clayton Acts;

(B) The "Dealer Agreement TBA" form of contract which is referred to in paragraph 29 of the complaint and which paragraph 27 of the complaint alleges was executed and entered into in violation of the Sherman and Clayton Acts;

(C) The "Distributor Agreement" form of contract which is referred to in paragraph 29 of the complaint and which paragraph 27 of the complaint alleges was executed and entered into in violation of the Sherman and Clayton Acts;

(D) The "Petroleum Products and Equipment Agreement" form of contract which is referred to in paragraph 30 of the complaint and which paragraph 27 of the complaint alleges was executed and entered into in violation of the Sherman and Clayton Acts;

(E) The "Sublease" form which is referred to in paragraph 31 of the complaint and which paragraph 27 of the complaint alleges was executed and entered into in violation of the Sherman and Clayton Acts;

This motion is made under Rule 34 of the Federal Rules of Civil Procedure on the grounds that plaintiff has the possession or custody of each of the foregoing documents and that each contains evidence relevant and material to [fol. 108] the matters involved in this action, and that defendants cannot determine from the complaint herein which of the several forms of contracts and subleases which may have been used heretofore by defendants are charged to

be in violation of the anti-trust Acts, and that until defendants are informed as to the contents of the contracts and subleases which are referred to in the complaint and alleged to be unlawful defendants are unable to determine the nature of the charges of unlawful conduct made against them or to state or formulate their responsive pleading or defenses with respect thereto.

This motion is supported by Affidavit C and by Points and Authorities, annexed hereto.

[fol. 109]

Affidavits "A," "B" and "C"

[fol. 110] AFFIDAVIT "A"

UNITED STATES OF AMERICA,
State of California,
County of Los Angeles. ss.

JOHN M. HALL, being first duly sworn, deposes and says:

That he is a member of the bar of this Honorable Court and one of the attorneys of record for defendants herein;

That on or about September 30, 1940 plaintiff herein caused to be filed in the District Court of the United States for the District of Columbia a civil action, No. 8524, entitled "United States of America, Plaintiff, v. American Petroleum Institute, et al, Defendants," wherein and whereby plaintiff herein sought injunctive and other relief against numerous defendants, including defendants herein, Standard Oil Company of California and Standard Stations, Inc., under the Sherman Act and the Clayton Act; that a true copy of the complaint in said action No. 8524 is annexed hereto and made a part hereof;

That as will more fully appear by a comparison of said complaint in said action No. 8524 and the complaint in the action at bar, the charges made and the relief sought by the complaint in the action at bar are substantially the same as certain of the charges made and certain of the relief sought against defendants herein by the complaint in said action No. 8524;

That affiant is informed and verily believes and upon such ground avers that said complaint in said action No. 8524 has never been amended, that said action No. 8524

has never been dismissed as to defendants in the action at bar, and that said action No. 8524 is now pending and undetermined.

John M. Hall.

Subscribed and sworn to before me this 2nd day of April, 1947. Harriet S. Elder, Notary Public in and for the County of Los Angeles, State of California. My Commission Expires June 16, 1949.

[fol. 111] Civil Action No. 8524

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff,

v.

AMERICAN PETROLEUM INSTITUTE, ET AL, Defendants

COMPLAINT

Mac Asbill, W. B. Watson Snyder, Special Assistants to the Attorney General. H. Douglas Weaver, Special Attorney.

Robert H. Jackson, Attorney General. Thurman Arnold, Assistant Attorney General. Edward M. Curran, United States Attorney.

Filed September 30, 1940.

[fol. 112] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 8524

UNITED STATES OF AMERICA, Plaintiff

v.

AMERICAN PETROLEUM INSTITUTE; THE ATLANTIC REFINING COMPANY; Barnsdall Oil Company; Cities Service Company; Consolidated Oil Corporation; Continental Oil Company; Gulf Oil Corporation; Mid-Continent Petro-

leum Corporation; The Ohio Oil Company; Phillips Petroleum Company; The Pure Oil Company; Shell Union Oil Corporation; Skelly Oil Company; Socony-Vacuum Oil Company, Incorporated; Standard Oil Company of California; Standard Oil Company (Indiana); Standard Oil Company (Kentucky); Standard Oil Company (New Jersey); The Standard Oil Company (Ohio); Sun Oil Company; The Texas Corporation; Tide Water Associated Oil Company; Union Oil Company of California; Abbott Gasoline Company; Ajax Pipe Line Corporation; Alco Royalty Corporation; Allen Petroleum Corporation; American Bituminus Company; American Mineral Spirits Company; The American Oil Company; The American Oil Company (Md.); Arkana Transit Corporation; Arkansas Fuel Oil Company; Arkansas Natural Gas Corp.; Arkansas Pipeline Corp.; Asiatic Petroleum Corporation; Associated Oil Company of Wyoming; Atlantic Oil Shipping Company; Atlantic Petroleum Purchasing Corporation; Atlantic Pipe Line Company; Atlas Gas & Oil Co., Inc.; Atlas Supply Company; Baker Oil Company; Bareco Oil Company; Barnsdall Pipe Line Company; Barnsdall Products Corporation; Baron-Huot Oil Company; Bartron Petroleum Corporation; Beacon Sun Company; Bell General Transit Corporation; Berea Engineering Company; Big Lake Oil Company; The Boston-Wyoming Oil Company; Bradford Transit Company; The Buck Creek Oil Company; Buffalo Pipe Line Corporation; California Coast Oil Company; The California Company; California Petroleum Corporation (Utah); California Pipe Line Company; California Standard Oil Company, Ltd.; Cape Fear [fol. 113] Terminal Company; The Carter Oil Company; Central Oil Company, Inc.; Central States Pipe Line Company; Certified Auto Service, Inc.; Chappell Oil Company; Cherokee Oil Company, Inc.; Cities Service Oil Company (Del.); Cities Service Oil Company (Pa.); Claremont Oil Company; Colonial Beacon Oil Company; Colonial Oil Company; Colonial Oil Company, Inc.; Col-Tex Refining Company; Commercial Oil Company; Commonwealth Petroleum Holding Company; Conewango Refining Company; Conoco Oil Company (Minn.); The Consolidated Gasoline Company; Consolidated Oil Company of Houston, Texas; Consolidated Pipe Line Company; Continental Mexican Petroleum

Company; Continental Oil Company (Texas); Continental Pipe Line Company; Continental Steamship Company; Cosden Pipe Line Company; Crew-Levick Company; Crowley Oil and Mineral Company; Crude Oil Marketing and Trading Company; Crude Oil Pipe Line Company; Crude Oil Terminal Company; Davis Gasoline Company; Defiance Hi-Speed Oil Company; Delaware Consolidated Oil Company; Detroit Southern Pipe Line Company; Diamond Oil Company; Diamond Osborne Oil Company; Downtown Auto Parking Company; Doyle Gasoline & Oil Co., Inc.; Eagleroc Oil Company; Eastern Terminal Corporation; East Texas Refining Company; Empire Gas & Fuel Company; Empire Pipeline Company; Enalpac Oil and Gas Company; Esso, Incorporated; Ethyl Gasoline Corporation; Exchange Oil Company; Finance Company of the Carolinas, Inc.; Fleet-Wing Corporation; Fordsville Gathering Line, Inc.; Foreign Tankship Corporation; Fort Collins Producing Corporation; Frank Harris Floyd, Inc.; Franklin Railway Oil Corporation; Frontenac Pipe Line Company; Fuel Oil Corporation; General Petroleum Company, Inc.; General Petroleum Corporation of California; General Petroleum Corporation of Nevada; General Pipeline Company of California; General Terminal Company; Genessee-Diamond Oil Company; Gilbert & Barker Manufacturing Company; Gilco, Inc.; Gilmore Development Company; Gilmore Oil Company; Gilmore-Snyder Company; Goodyear-Wende Oil Corporation; Great Lakes Pipe Line Company; Great Lakes Transport Corporation; Great Southern Oil Company; Group No. 1 Oil Corporation; Group No. 2 Oil Corporation; Gulf Refining [fol. 114] Company; Gulf Research & Development Company; Hardrock Oil Company; Hickok Oil Corporation, Hickok Oil Corporation (Michigan); Hickok Pipe Line Company; The Hickok Producing and Development Company; Highland Oil Corporation; Hi-Speed Oil Corporation; Hi-Speed Tire & Accessory Company; Hope Construction and Refining Company; Hope Natural Gas Company; Hope Producing Company; Hudson Oil Company; Hughes Oil Company; Humble Oil & Refining Company; Humble Pipe Line Company; Huntington Beach Company; Hygrade Petroleum Corporation; The Illinois Pipe Line Company; Independent Natural Gas Company; Independent Oil Company, Inc. of Pennsylvania; Indian

Refining Company; Indian Territory Illuminating Oil Company; International Pipe Line Company; International Refining Company; Jacox Oil Corporation; Johnson Oil Company; Kalamazoo Diamond Oil Company; Kaw Pipe Line Company; Kay & Kiowa Oil Company; Kesbec, Inc.; Kettleman & Inglewood Corporation; Kettleman North Dome Association; Kettleman Oil Corporation, Ltd.; Keystone Pipe Line Company; K. & Q. Service Stations, Inc.; Lake View Oil Company; Lansing Oil Company; Laramie Oil Company; Latonia Refining Corporation; Lima Hi-Speed Company; Lisbon Gasoline Company, Inc.; Lord Baltimore Filling Stations, Inc.; Los Angeles Midway Pipe Line Company; Los Angeles Oil Company; Magnolia Petroleum Company; Magnolia Pipe Line Company; Magnolia Pipe Line Company of Illinois; Main Oil Company; Martin & Schwartz, Inc.; Merrico Royalties Company; Merritt Oil Corporation; Mexican Petroleum Corporation; Mexican Petroleum Corporation of Georgia; Michigan-Toledo Pipe Line Company; Middlesex Pipe Line Company; Mid-South Oil Company; Midwest Oil Company; Mission Corporation; Moreland Oil Corporation of Delaware; Motor Tankship Corporation; Mountain Producers Corporation; Mountain State Gas Company; Mount Clemens Oil Company; Murphy Oil Company; Murphy-Miles Oil Company; New Mexico Pipe Line Company; North West Oil Company; The Ohio Independent Oil Company; The Ohio Producing and Refining Company; Ohio River Pipe Line Company; Oklahoma Pipe Line Company; Olympic Oil Corporation; Orange State Oil Company; Owensboro-Ashland Company; Pacific Western Oil Corporation; Pan [fol. 115] American Petroleum Company; Pan American Petroleum Corporation; Pan American Petroleum & Transport Company; Pan American Pipe Line Company; Pan American Production Company; Pan American Refining Corporation; Pan American Southern Corporation; Pantheon Oil Company; Paramount-Pingree Oil Company; Paso-Tex Pipe Line Company; Peconic Oil Corporation; Peninsula Oil Company, Peninsula Oil & Refining Company; Pennsylvania Oil Marketers, Inc.; Penola, Inc.; Petroleum Advisors, Inc.; Petroleum Corporation of America; Petroleum Heat & Power Company; Petroleum Terminals, Inc.; Petroleum Transit Corpora-

tion; Phillips Pipe Line Company; Pioneer Midway Oil Company, Consolidated; Pittsburgh Oil & Gas Company; The Pocahontas Oil Corporation; Pontiac Oil & Gas Company; Producers Oil Corporation; Pure Oil Company of the Carolinas, Inc.; Pure Oil Company of Tennessee; Pure Oil Distributing Company; Pure Oil Pipe Line Company (Pennsylvania); Pure Oil Products Company; Pure Transportation Company; Puritan Petroleum Corporation; Puritan Stations, Inc.; Reagan County Purchasing Company, Inc.; Red "C" Oil Company; Red Indian Oil Company; Refiners Oil Corporation; Repollo Oil Company; Reserve Gas Company; Reservoir Hill Gasoline Company; Reward Oil Company; Richardson Lubricating Company; Richfield Oil Company; Richfield Oil Corporation; Richfield Oil Corporation of New York; Richfield Realty Corporation; Ridge Oil Corporation; Rio Grande Oil Company, Inc.; Rock River Petroleum Company; Rocky Mountain Pipe Line Company; Sabine Transportation Company, Inc.; Saxet Heights Pipe Line Company; Seaboard Oil Company of Delaware; Seaboard Oil Company, Inc.; Seaside Oil Company; Shaw Bros. Oil Company; Shell American Petroleum Company; Shell Oil Company, Inc.; Shell Pipe Line Corporation; Sherrill Oil Company; Sherrill Terminal Company; Sherwood Brothers, Incorporated; Signal Hill Gasoline Company; Simrall Corporation; Sinclair Navigation Company; Sinclair Prairie Oil Company; Sinclair Prairie Oil Company of Louisiana, Inc.; Sinclair Prairie Oil Marketing Company; Sinclair Refining Company; Sinclair Wyoming Oil Company; Skelco Products Company; Skelly Refining Company, Inc.; Sobol Bros. Service Stations, Inc.; Socony-Vacuum Oil Corporation; Sohio Corporation; Sohio Pipe Line Company; Sohio Producing Company; Sommers Home Oil Company; Southeastern Pipe Line Com-
[fol. 116] pany; Southern Phillips Corporation; South Penn Oil Company; Southwestern Wharf Company; Spanish Peak Oil Company; Stanavo Specifications Board, Inc.; Standard Gas Company; Standard Oil Company of Louisiana; Standard Oil Company of Nebraska; Standard Oil Company of New Jersey; Standard Oil Company of New York; Standard Oil Company of Pennsylvania; Standard Oil Company of Texas; Standard Oil Company (Washington); Standard Oil Export Corporation; The Standard Shale Products Company; Standard

Stations, Inc.; Standish Pipe Line Company; Stanolind Oil & Gas Company; Stanolind Oil Purchasing Company; Stanolind Pipe Line Company; Sterling Oil & Development Company; Summerfield Oil Company; The Sun Oil Line Company; Sun Oil Line Company of Michigan; Sun Pipe Line Company; Sun Pipe Line, Inc.; Susquehanna Pipe Line Company; Superior Pacific Oil Co, Inc.; Sweetwater Oil Company; Sylvestre Oil Company, Inc.; Sylvestre Oil Terminal Company, Inc.; Sylvestre Utilities Company, Inc.; Tabb's Bay Oil Company; The Texas Company (California); The Texas Company (Delaware); The Texas-Empire Pipe Line Company; The Texas-Empire Pipe Line Company of Texas; Texas-New Mexico Pipe Line Company; The Texas Pipe Line Company; The Texas Pipe Line Company of Oklahoma; Texas Production Company of Nebraska; Texon Oil & Land Company; Texon Oil & Land Company of Texas; Theisen-Clemens Company; Theisen-Clemens Investing Company; Tidal Pipe Line Company; The Tide-Water Pipe Company, Limited; Toledo Northern Pipe Line Company; Transit & Storage Company; Treasure State Pipe Line Company; Tri-Lakes Corporation; Tuscarora Oil Company, Ltd.; Union Oil Company of Nevada; Union Steamship Company; The United Oil Company; United States Pipe Line Company; Utah Oil Refining Company; Vacuum Oil Company (Delaware); Valley Pipe Line Company; Wabash Pipe Line Company; Wadhams Oil Company; Waggoner Service Stations, Inc.; Warner-Quinlan Company of Texas; Washington Refining Company; West Coast Oil Company; Westcott Oil Company; Western Gulf Oil Company; West-Harden Oil Company, Inc.; White Eagle Pipe Line Company, Inc.; White Star Northern Oil Company; Wilson Oil Corporation; Woco-Pep Company of Tuscaloosa; Wofford Oil Company (Alabama); Wofford Oil Company of Georgia; and Yount-Lee Pipe Line Company, Defendants.

[fol. 117] COMPLAINT

The United States of America, by Edward M. Curran, its attorney for the District of Columbia, acting under the direction of the Attorney General, brings this complaint against the above-named defendants and upon information and belief alleges:

I

Description of Defendants

1. The defendant American Petroleum Institute, hereinafter referred to as the "Institute", is a membership corporation organized under the laws of the District of Columbia and maintains an office at Room 930 in the Munsey Building, 1329 E Street, N.W., Washington, D. C.

2. The following defendants, hereinafter referred to as the "Majors," are duly organized and existing under the laws of the respective States and have their principal places of business as indicated in the following table:

Name of corporation	Abbreviated name	State of incorporation	Location of principal place of business
The Atlantic Refining Company	Atlantic	Pennsylvania	Philadelphia, Pa.
Barnsdall Oil Company	Barnsdall	Delaware	Tulsa, Okla.
Cities Service Company	Cities Service	Delaware	New York, N. Y.
Consolidated Oil Corporation	Consolidated	New York	New York, N. Y.
Continental Oil Company	Continental	Delaware	Ponca City, Okla.
Gulf Oil Corporation	Gulf	Pennsylvania	Pittsburgh, Pa.
Mid-Continent Petroleum Corporation.	Mid-Continent	Delaware	Tulsa, Okla.
The Ohio Oil Company	Ohio	Ohio	Findlay, Ohio.
Phillips Petroleum Company	Phillips	Delaware	Bartlesville, Okla.
The Pure Oil Company	Pure	Ohio	Chicago, Ill.
Shell Union Oil Corporation	Shell	Delaware	New York, N. Y.
Skelly Oil Company	Skelly	Delaware	Tulsa, Okla.
Socony-Vacuum Oil Company, Incorporated.	Socony	New York	New York, N. Y.
Standard Oil Company of California.	Socal	Delaware	San Francisco, Calif.
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Standard Oil Company (Indiana)	Stanolind	Indiana	Chicago, Ill.
Standard Oil Company (Kentucky)	Soky	Kentucky	Louisville, Ky.
Standard Oil Company (New Jersey).	Esso	New Jersey	New York, N. Y.
The Standard Oil Company (Ohio)	Sohio	Ohio	Cleveland, Ohio.
Sun Oil Company	Sun	New Jersey	Philadelphia, Pa.
The Texas Corporation	Texas	Delaware	New York, N. Y.
Tide Water Associated Oil Company.	Tide Water	Delaware	New York, N. Y.
Union Oil Company of California	Union	California	Los Angeles, Calif.

3. The following defendants, subsidiaries and affiliates of defendant majors, hereinafter referred to as "Secondaries", are duly organized and existing under the laws of the respective States, have their principal places of business at and are affiliated with the defendant majors as indicated in the following table:

Name of corporation	Affiliation	State of incorporation	Location of principal place of business
Abbott Gasoline Company	Pure	Michigan	Ann Arbor, Mich.
Ajax Pipe Line Corporation	Sohio Pure Esso	Delaware	Tulsa, Okla.
Alco Royalty Corporation	Phillips	Delaware	Bartlesville, Okla.
Allen Petroleum Corporation	Pure	Delaware	Seaford, Del.
American Bitumuls Company	Socal	Delaware	San Francisco, Calif.
American Mineral Spirits Company	Pure	Illinois	Chicago, Ill.
The American Oil Company	Pure	Ohio	Hattiesburg, Miss.
The American Oil Company (Md.)	Stanolind	Maryland	Baltimore, Md.
Arkana Transit Corporation	Ohio Cities Service	Delaware	Shreveport, La.
Arkansas Fuel Oil Company	Cities Service	West Virginia	Shreveport, La.
Arkansas Natural Gas Corp.	Cities Service	Delaware	Shreveport, La.
Arkansas Pipeline Corp.	Cities Service	Delaware	Shreveport, La.
Asiatic Petroleum Corporation	Shell	Delaware	New York, N. Y.
Associated Oil Company of Wyoming.	Tide Water	Wyoming	San Francisco, Calif.
Atlantic Oil Shipping Company	Atlantic	Delaware	Philadelphia, Pa.
Atlantic Petroleum Purchasing Corporation.	Atlantic	Maryland	Philadelphia, Pa.
Atlantic Pipe Line Company	Atlantic	Maine	Philadelphia, Pa.
Atlas Gas & Oil Co., Inc.	Mid-Continent	Minnesota	St. Paul, Minn.
Atlas Supply Company	Stanolind Sohio Esso	Delaware	Newark, N. J.
Baker Oil Company	Mid-Continent	Arkansas	North Little Rock, Ark.
Bareco Oil Company	Barnsdall	Delaware	Tulsa, Okla.

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Barnsdall Pipe Line Company	Barnsdall	Delaware	Tulsa, Okla.
Barnsdall Products Corporation	Barnsdall	Delaware	Tulsa, Okla.
Baron-Huot Oil Company	Mid-Continent	Illinois	Kankakee, Ill.
Bartron Petroleum Corporation	Pure	New Jersey	Tennent, N. J.
Beacon Sun Company	Sun Esso	Delaware	Philadelphia, Pa.
Bell General Transit Corporation	Pure	Texas	Tulsa, Okla.
Berea Engineering Company	Sohio	Ohio	Cleveland, Ohio.
Big Lake Oil Company	Continental	Delaware	Pittsburgh, Pa.
The Boston-Wyoming Oil Company.	Continental	Arizona	Ponca City, Okla.
Bradford Transit Company	Tide Water	Pennsylvania	Bradford, Pa.
The Buck Creek Oil Company	Continental	Wyoming	Ponca City, Okla.
Buffalo Pipe Line Corporation	Atlantic	New York	Big Flats, N. Y.
California Coast Oil Company	Tide Water Union	California	Los Angeles, Calif.
The California Company	Socal	California	San Francisco, Calif.
California Petroleum Corporation (Utah).	Texas	Utah	Calpet, Wyo.
California Pipe Line Company	Socal	Nevada	San Francisco, Calif.
California Standard Oil Company, (Ltd.).	Socal	California	San Francisco, Calif.
Cape Fear Terminal Company	Pure Esso	No. Carolina	Wilmington, N. C.
The Carter Oil Company	Esso	West Virginia	Tulsa, Okla.
Central Oil Company, Inc.	Pure	Georgia	Augusta, Ga.
Central States Pipe Line Company	Texas	Illinois	Tulsa, Okla.
Certified Auto Service, Inc.	Tide Water	Nevada	San Francisco, Calif.
Chappell Oil Company	Continental	Wyoming	Ponca City, Okla.
Cherokee Oil Company, Inc.	Pure	Tennessee	Knoxville, Tenn.

Name of corporation	Affiliation	State of incorporation	Location of principal place of business
Cities Service Oil Company (Del.)	Cities Service	Delaware	Bartlesville, Okla.
Cities Service Oil Company (Pa.)	Cities Service	Pennsylvania	New York, N. Y.
Claremont Oil Company	Union	California	Los Angeles, Calif.
Colonial Beacon Oil Company	Esso	Massachusetts	Boston, Mass.
Colonial Oil Company	Pure	Georgia	Savannah, Ga.
Colonial Oil Company, Inc.	Pure	Virginia	Norfolk, Va.
Col-Tex Refining Company	Socal	Delaware	Oklahoma City, Okla.
Commercial Oil Company	Sohio	Ohio	Cleveland, Ohio.
Commonwealth Petroleum Holding Company.	Consolidated	Delaware	New York, N. Y.
Conewango Refining Company	Consolidated	Pennsylvania	Warren, Pa.
Conoco Oil Company (Minn.)	Continental	Minnesota	Ponca City, Okla.
The Consolidated Gasoline Company.	Pure	Ohio	Toledo, Ohio.
Consolidated Oil Company of Houston, Texas.	Cities Service	Texas	Houston, Tex.
Consolidated Pipe Line Company	Consolidated	Delaware	Independence, Kan.
Continental Mexican Petroleum Company.	Socony	Delaware	Los Angeles, Calif.
Continental Oil Company (Texas)	Continental	Texas	Houston, Tex.
Continental Pipe Line Company	Continental	Delaware	Ponca City, Okla.
Continental Steamship Company	Continental	Delaware	Baltimore, Md.
Cosden Pipe Line Company	Mid-Continent	Oklahoma	Tulsa, Okla.
Crew-Levick Company	Cities Service	Delaware	New York, N. Y.
Crowley Oil and Mineral Company	Stanolind	Louisiana	Tulsa, Okla.
Crude Oil Marketing and Trading Company.	Continental	Texas	San Antonio, Tex.
Crude Oil Pipe Line Company	Continental	Texas	San Antonio, Tex.
Crude Oil Terminal Company	Continental	Texas	Corpus Christi, Tex.

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Davis Gasoline Company	Pure	Michigan	Toledo, Ohio.
Defiance Hi-Speed Oil Company	Pure	Ohio	Defiance, Ohio.
Delaware Consolidated Oil Company.	Pure	Delaware	Tulsa, Okla.
Detroit Southern Pipe Line Company.	Pure Gulf Sun	Michigan	Chicago, Ill.
Diamond Oil Company	Mid-Continent	Wisconsin	Milwaukee, Wis.
Diamond Osborne Oil Company	Mid-Continent	Illinois	Rockford, Ill.
Downtown Auto Parking Company	Pure	Illinois	Chicago, Ill.
Doyle Gasoline & Oil Co., Inc.	Gulf	New York	Rochester, N. Y.
Eagleroc Oil Company	Sohio	Ohio	Youngstown, Ohio.
Eastern Terminal Corporation	Shell	Massachusetts	New York, N. Y.
East Texas Refining Company	Skelly	Texas	Dallas, Tex.
Empire Gas & Fuel Company	Cities Service	Delaware	Jersey City, N. J.
Empire Pipeline Company	Cities Service	Delaware	Bartlesville, Okla.
Enalpac Oil and Gas Company	Ohio	Wyoming	Casper, Wyo.
Esso, Incorporated	Esso	Delaware	New York, N. Y.
Ethyl Gasoline Corporation	Esso	Delaware	New York, N. Y.
Exchange Oil Company	Consolidated	Maine	Tulsa, Okla.
Finance Company of the Carolinas, Inc.	Pure	No. Carolina	Charlotte, N. C.
Fleet-Wing Corporation	Sohio	Ohio	Cleveland, Ohio.
Fordsville Gathering Line, Inc.	Sohio	Indiana	Owensboro, Ky.
Foreign Tankship Corporation	Socal	Panama	San Francisco, Calif.
Fort Collins Producing Corporation	Continental	Colorado	Ponca City, Okla.
Frank Harris Floyd, Inc.	Socony	Michigan	Detroit, Mich.
Franklin Railway Oil Corporation	Socony	Delaware	New York, N. Y.
Frontenac Pipe Line Company	Texas	Texas	Tyler, Texas.

Name of corporation	Affiliation	State of incorporation	Location of principal place of business
Fuel Oil Corporation	Sohio Pure	Ohio	Detroit, Mich.
General Petroleum Company, Inc.	Socony	New York	New York, N. Y.
General Petroleum Corporation of California.	Socony	Delaware	Los Angeles, Calif.
General Petroleum Corporation of Nevada.	Socony	Nevada	Los Angeles, Calif.
General Pipeline Company of California.	Socony	California	Los Angeles, Calif.
General Terminal Company	Socony	California	Los Angeles, Calif.
Genessee-Diamond Oil Company	Mid-Continent	Michigan	Flint, Mich.
Gilbert & Barker Manufacturing Company.	Esso	Massachusetts	Springfield, Mass.
Gilco, Inc.	Socony	California	Long Beach, Calif.
Gilmore Development Company	Socony	California	Los Angeles, Calif.
Gilmore Oil Company	Socony	California	Los Angeles, Calif.
Gilmore-Snyder Company	Socony	California	Los Angeles, Calif.
Goodyear-Wende Oil Corporation	Texas	New York	Buffalo, N. Y.
Great Lakes Pipe Line Company	Texas Phillips Mid-Continent Consolidated Pure Skelly Continental Cities Service	Delaware	Kansas City, Mo.
Great Lakes Transport Corporation	Pure Sohio	Delaware	Detroit, Mich.
Great Southern Oil Company	Tide Water	Kansas	Kansas City, Kans.
Group No. 1 Oil Corporation	Continental	Delaware	Fort Worth, Tex.

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Group No. 2 Oil Corporation	Continental	Delaware	Fort Worth, Tex.
Gulf Refining Company	Gulf	Delaware	Pittsburgh, Pa.
Gulf Research & Development Company.	Gulf	Delaware	Pittsburgh, Pa.
Hardrock Oil Company	Stanolind	Montana	Great Falls, Mont.
Hickok Oil Corporation	Pure	Ohio	Toledo, Ohio.
Hickok Oil Corporation (Michigan)	Pure	Michigan	Toledo, Ohio.
Hickok Pipe Line Company	Pure	Ohio	Toledo, Ohio.
The Hickok Producing and Development Company.	Pure	Ohio	Toledo, Ohio.
Highland Oil Corporation	Pure	Michigan	Detroit, Mich.
Hi-Speed Oil Corporation	Pure	Michigan	Imlay City, Mich.
Hi-Speed Tire & Accessory Company.	Pure	Ohio	Toledo, Ohio.
Hope Construction and Refining Company.	Esso	Delaware	Pittsburgh, Pa.
Hope Natural Gas Company	Esso	West Virginia	Pittsburgh, Pa.
Hope Producing Company	Esso	Delaware	Monroe, La.
Hudson Oil Company	Stanolind	Wyoming	Tulsa, Okla.
Hughes Oil Company	Consolidated	Delaware	Chicago, Ill.
Humble Oil & Refining Company	Esso	Texas	Houston, Tex.
Humble Pipe Line Company	Esso	Texas	Houston, Tex.
Huntington Beach Company	Socal	California	San Francisco, Calif.
Hy-grade Petroleum Corporation	Gulf	New York	New York, N. Y.
The Illinois Pipe Line Company	Ohio	Ohio	Findlay, Ohio.
Independent Natural Gas Company.	Phillips	Delaware	Bartlesville, Okla.

Name of corporation	Affiliation	State of incorporation	Location of principal place of business
Independent Oil Company, Inc. of Pennsylvania.	Socony	Delaware	Altoona, Pa.
Indian Refining Company	Texas	Maine	Lawrenceville, Ill.
Indian Territory Illuminating Oil Company.	Cities Service	New Jersey	Bartlesville, Okla.
International Pipe Line Company	Texas	Montana	Sunburst, Mont.
International Refining Company	Texas	Montana	Sunburst, Mont.
Jacox Oil Corporation	Pure	Michigan	Bellville, Mich.
Johnson Oil Company	Pure	Michigan	Bay City, Mich.
Kalamazoo-Diamond Oil Company	Mid-Continent	Michigan	Kalamazoo, Mich.
Kaw Pipe Line Company	Texas Cities Service Phillips	Delaware	Tulsa, Okla.
Kay & Kiowa Oil Company	Mid-Continent	Oklahoma	Tulsa, Okla.
Kesbec, Inc.	Esso	New York	New York, N. Y.
Kettleman & Inglewood Corporation.	Socal	Nevada	San Francisco, Calif.
Kettleman North Dome Association	Socony Continental Texas Tidewater Socal Union	California	Los Angeles, Calif.
Kettleman Oil Corporation, Ltd.	Socal	Delaware	San Francisco, Calif.
Keystone Pipe Line Company	Atlantic	Pennsylvania	Philadelphia, Pa.
K. & Q. Service Stations, Inc.	Socony	New York	New York, N. Y.
Lake View Oil Company	Union	California	Los Angeles, Calif.
Lansing Oil Company	Mid-Continent	Michigan	Lansing, Mich.
Laramie Oil Company	Stanolind	Wyoming	Laramie, Wyo.
Latonia Refining Corporation	Sohio	Ohio	Cleveland, Ohio.
Lima Hi-Speed Company	Pure	Ohio	Lima, Ohio.
Lisbon Gasoline Company, Inc.	Cities Service	Arkansas	Shreveport, La.
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Lord Baltimore Filling Stations, Inc.	Stanolind	Maryland	New York, N. Y.
Los Angeles Midway Pipe Line Company.	Consolidated Cities Service	California	Los Angeles, Calif.
Los Angeles Oil Company	Union	California	Los Angeles, Calif.
Magnolia Petroleum Company	Socony	Texas	Dallas, Tex.
Magnolia Pipe Line Company	Socony	Texas	Dallas, Tex.
Magnolia Pipe Line Company of Illinois.	Socony	Illinois	Dallas, Tex.
Main Oil Company	Pure	Michigan	Holland, Mich.
Martin & Schwartz, Inc.	Sun Socony	New York	Buffalo, N. Y.
Merrico Royalties Company	Continental	Wyoming	Ponca City, Okla.
Merritt Oil Corporation	Continental	Maine	Ponca City, Okla.
Mexican Petroleum Corporation	Stanolind	Maine	New York, N. Y.
Mexican Petroleum Corporation of Georgia.	Stanolind	Georgia	New York, N. Y.
Michigan-Toledo Pipe Line Company.	Sohio	Delaware	Mt. Pleasant, Mich.
Middlesex Pipe Line Company	Sun	New Jersey	Philadelphia, Pa.
Mid-South Oil Company	Pure	Ohio	Memphis, Tenn.
Midwest Oil Company	Stanolind	Arizona	Denver, Colo.
Mission Corporation	Tide Water Skelly	Nevada	Reno, Nev.
Moreland Oil Corporation of Delaware.	Socony	Delaware	Adrian, Mich.
Motor Tankship Corporation	Sun	Delaware	Philadelphia, Pa.
Mountain Producers Corporation	Stanolind	Delaware	Denver, Colo.
Mountain State Gas Company	Pure	West Virginia	Chicago, Ill.
Mount Clemens Oil Company	Pure	Michigan	Mount Clemens, Mich.

Name of corporation	Affiliation	State of incorporation	Location of principal place of business
Murphy Oil Company	Socal	California	San Francisco, Calif.
Murphy-Miles Oil Company	Stanolind	Illinois	Chicago, Ill.
New Mexico Pipe Line Company	Continental	New Mexico	Ponca City, Okla.
North West Oil Company	Stanolind	Illinois	Chicago, Ill.
The Ohio Independent Oil Company.	Sohio	Ohio	Springfield, Ohio.
The Ohio Producing and Refining Company.	Esso	Delaware	Cleveland, Ohio.
Ohio River Pipe Line Company	Sohio	Delaware	Ashland, Ky.
Oklahoma Pipe Line Company	Esso	Oklahoma	Tulsa, Okla.
Olympic Oil Corporation	Pure	Ohio	Cleveland, Ohio.
Orange State Oil Company	Cities Service	Florida	Miami, Fla.
Owensboro-Ashland Company	Sohio	Kentucky	Owensboro, Ky.
Pacific Western Oil Corporation	Tide Water Skelly	Delaware	Jersey City, N. J.
Pan American Petroleum Company	Cities Service Consolidated	California	Los Angeles, Calif.
Pan American Petroleum Corporation.	Stanolind	Delaware	New York, N. Y.
Pan American Petroleum & Transport Company.	Stanolind	Delaware	New York, N. Y.
Pan American Pipe Line Company	Stanolind	Delaware	New York, N. Y.
Pan American Production Company.	Stanolind	Delaware	New York, N. Y.
Pan American Refining Corporation.	Stanolind	Delaware	New York, N. Y.
Pan American Southern Corporation.	Stanolind	Delaware	New York, N. Y.
Pantheon Oil Company	Tide Water	California	San Francisco, Calif.
Paramount-Pingree Oil Company	Continental	Utah	Salt Lake City, Utah.
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Paso-Tex Pipe Line Company	Socal	Delaware	San Francisco, Calif.
Peconic Oil Corporation	Pure	New York	Riverhead, N. Y.
Peninsular Oil Company	Sohio	Michigan	Detroit, Mich.
Peninsular Oil & Refining Company	Esso	Florida	Tampa, Fla.
Pennsylvania Oil Marketers, Inc.	Tide Water	Delaware	New York, N. Y.
Penola, Inc.	Esso	Delaware	Pittsburgh, Pa.
Petroleum Advisors, Inc.	Cities Service	New Jersey	New York, N. Y.
Petroleum Corporation of America	Consolidated Continental Gulf Esso Mid-Continent Ohio Cities Service Socony Socal Stanolind Texas Tide Water	Delaware	Jersey City, N. J.
Petroleum Heat & Power Company.	Stanolind	Delaware	New York, N. Y.
Petroleum Terminals, Inc.	Pure	Michigan	Detroit, Mich.
Petroleum Transit Corporation	Socony Pure Shell Cities Service Stanolind Atlantic Sohio Esso	Ohio	Detroit, Mich.
Phillips Pipe Line Company	Phillips	Delaware	Bartlesville, Okla.

Name of corporation	Affiliation	State of incorporation	Location of principa place of business
Pioneer Midway Oil Company, Consolidated.	Tide Water	California	San Francisco, Calif.
Pittsburgh Oil & Gas Company	Barnsdall	Delaware	Pittsburgh, Pa.
The Pocahontas Oil Corporation	Pure	Ohio	Cleveland, Ohio.
Pontiac Oil & Gas Company	Pure	Michigan	Pontiac, Mich.
Producers Oil Corporation	Pure	Michigan	Owosso, Mich.
Pure Oil Company of the Carolinas, Inc.	Pure	No. Carolina	Charlotte, N. C.
Pure Oil Company of Tennessee	Pure	Tennessee	Atlanta, Ga.
Pure Oil Distributing Company	Pure	Delaware	Beaumont, Tex.
Pure Oil Pipe Line Company (Pennsylvania).	Pure	Pennsylvania	Chicago, Ill.
Pure Oil Products Company	Pure	Ohio	Chicago, Ill.
Pure Transportation Company	Pure	Ohio	Chicago, Ill.
Puritan Petroleum Corporation	Pure	Pennsylvania	Shenandoah, Pa.
Puritan Stations, Inc.	Pure	Michigan	Detroit, Mich.
Reagan County Purchasing Company, Inc.	Continental	Delaware	Fort Worth, Tex.
Red "C" Oil Company	Atlantic	Maryland	Baltimore, Md.
Red Indian Oil Company	Sohio	Michigan	Detroit, Mich.
Refiners Oil Corporation	Soky	Kentucky	Louisville, Ky.
Repollo Oil Company	Consolidated	Wyoming	Tulsa, Okla.
Reserve Gas Company	Esso	West Virginia	Pittsburgh, Pa.
Reservoir Hill Gasoline Company	Cities Service Consolidated	California	Los Angeles, Calif.
Reward Oil Company	Tide Water	California	San Francisco, Calif.
Richardson Lubricating Company	Continental	Illinois	Quincy, Ill.
Richfield Oil Company	Cities Service Consolidated	California	Los Angeles, Calif.

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Richfield Oil Corporation	Cities Service Consolidated	Delaware	Los Angeles, Calif.
Richfield Oil Corporation of New York.	Consolidated	Delaware	New York, N. Y.
Richfield Realty Corporation	Cities Service Consolidated	California	Los Angeles, Calif.
Ridge Oil Corporation	Sohio	Ohio	Madison, Ohio.
Rio Grande Oil Company, Inc.	Cities Service Consolidated	Nevada	Los Angeles, Calif.
Rock River Petroleum Company	Ohio	Delaware	Findlay, Ohio.
Rocky Mountain Pipe Line Company.	Continental	Delaware	Denver, Colo.
Sabine Transportation Company, Inc.	Pure	Delaware	Port Arthur, Tex.
Saxet Heights Pipe Line Company	Continental	Texas	San Antonio, Tex.
Seaboard Oil Company of Delaware	Texas Tide Water	Delaware	New York, N. Y.
Seaboard Oil Company, Inc.	Pure	Ohio	Jacksonville, Fla.
Seaside Oil Company	Tide Water	California	Santa Barbara, Calif.
Shaw Bros. Oil Company	Pure	Florida	Miami, Fla.
Shell American Petroleum Company.	Shell	Delaware	Kokomo, Ind.
Shell Oil Company, Inc.	Shell	Virginia	New York, N. Y.
Shell Pipe Line Corporation	Shell	Maryland	St. Louis, Mo.
Sherrill Oil Company	Pure	Ohio	Pensacola, Fla.
Sherrill Terminal Company	Pure	Florida	Pensacola, Fla.
Sherwood Brothers, Incorporated	Consolidated	Maryland	Baltimore, Md.
Signal Hill Gasoline Company	Cities Service Consolidated	California	Los Angeles, Calif.
Simsall Corporation	Sohio	Delaware	Mt. Pleasant, Mich.
Sinclair Navigation Company	Consolidated	Delaware	New York, N. Y.

Name of corporation	Affiliation	State of incorporation	Location of principal place of business
Sinclair Prairie Oil Company	Consolidated	Maine	Tulsa, Okla.
Sinclair Prairie Oil Company of Louisiana, Inc.	Consolidated	Louisiana	Tulsa, Okla.
Sinclair Prairie Oil Marketing Company.	Consolidated	Delaware	Independence, Kans.
Sinclair Refining Company	Consolidated	Maine	New York, N. Y.
Sinclair Wyoming Oil Company	Consolidated	Delaware	Tulsa, Okla.
Skelco Products Company	Skelly	Missouri	Kansas City, Mo.
Skelly Refining Company, Inc.	Skelly	Texas	Bay City, Tex.
Sobol Bros. Service Stations, Inc.	Socony	New York	New York, N. Y.
Socony-Vacuum Oil Corporation	Socony	Delaware	New York, N. Y.
Sohio Corporation	Sohio	Delaware	Cleveland, Ohio.
Sohio Pipe Line Company	Sohio	Delaware	Cleveland, Ohio.
Sohio Producing Company	Sohio	Ohio	Cleveland, Ohio.
Sommers Home Oil Company	Continental	Colorado	Denver, Colo.
Southeastern Pipe Line Company	Gulf Pure	Delaware	Atlanta, Ga.
Southern Phillips Corporation	Phillips	Delaware	Corpus Christi, Tex.
South Penn Oil Company	Tide Water	Pennsylvania	Pittsburgh, Pa.
Southwestern Wharf Company	Socony	California	Los Angeles, Calif.
Spanish Peak Oil Company	Esso	Oklahoma	Ardmore, Okla.
Stanavo Specifications Board, Inc.	Socal	Delaware	San Francisco, Calif.
Standard Gas Company	Socal	Idaho	San Francisco, Calif.
Standard Oil Company of Louisiana	Esso	Louisiana	Baton Rouge, La.
Standard Oil Company of Nebraska	Stanolind	Nebraska	Omaha, Nebr.
Standard Oil Company of New Jersey.	Esso	Delaware	New York, N. Y.
Standard Oil Company of New York.	Socony	Delaware	New York, N. Y.

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Standard Oil Company of Pennsylvania.	Esso	Delaware	Philadelphia, Pa.
Standard Oil Company of Texas	Socal	Delaware	San Francisco, Calif.
Standard Oil Company (Washington).	Socal	Washington	San Francisco, Calif.
Standard Oil Export Corporation	Esso	Delaware	New York, N. Y.
The Standard Shale Products Company.	Continental	Colorado	Ponca City, Okla.
Standard Stations, Inc.	Socal	Delaware	San Francisco, Calif.
Standish Pipe Line Company	Phillips	Delaware	Bartlesville, Okla.
Stanolind Oil & Gas Company	Stanolind	Delaware	Tulsa, Okla.
Stanolind Oil Purchasing Company	Stanolind	Delaware	Tulsa, Okla.
Stanolind Pipe Line Company	Stanolind	Maine	Tulsa, Okla.
Sterling Oil & Development Company.	Tide Water	California	San Francisco, Calif.
Summerfield Oil Company	Pure	Michigan	Flint, Mich.
The Sun Oil Line Company	Sun	Ohio	Philadelphia, Pa.
Sun Oil Line Company of Michigan	Sun	Michigan	Philadelphia, Pa.
Sun Pipe Line Company	Sun	Texas	Beaumont, Tex.
Sun Pipe Line, Inc.	Sun	New York	Philadelphia, Pa.
Susquehanna Pipe Line Company	Sun	Pennsylvania	Philadelphia, Pa.
Supreme Pacific Oil Co., Inc.	Socony	Pennsylvania	Scranton, Pa.
Sweetwater Oil Company	Stanolind	Wyoming	Rock Springs, Wyo.
Sylvestre Oil Company, Inc.	Esso	New York	Mt. Vernon, N. Y.
Sylvestre Oil Terminal Company, Inc.	Esso	Delaware	Mt. Vernon, N. Y.
Sylvestre Utilities Company, Inc.	Esso	Delaware	Mt. Vernon, N. Y.
Tabb's Bay Oil Company	Gulf	Arizona	Houston, Tex.
The Texas Company (California)	Texas	California	Los Angeles, Calif.
The Texas Company (Delaware)	Texas	Delaware	New York, N. Y.
The Texas-Empire Pipe Line Company.	Texas Cities Service	Delaware	Tulsa, Okla.

Name of corporation	Affiliation	State of incorporation	Location of principal place of business
The Texas-Empire Pipe Line Company of Texas.	Texas Tide Water Cities Service	Delaware	Tulsa, Okla.
Texas-New Mexico Pipe Line Company.	Texas Tide Water Cities Service Consolidated.	Delaware	Houston, Tex.
The Texas Pipe Line Company	Texas	Texas	Houston, Tex.
The Texas Pipe Line Company of Oklahoma.	Texas	Oklahoma	Tulsa, Okla.
Texas Production Company of Nebraska.	Texas	Nebraska	New York, N. Y.
Texon Oil & Land Company	Continental	Delaware	Fort Worth, Tex.
Texon Oil & Land Company of Texas.	Continental	Texas	Fort Worth, Tex.
Theisen-Clemens Company	Mid-Continent	Michigan	St. Joseph, Mich.
Theisen-Clemens Investing Company.	Mid-Continent	Michigan	St. Joseph, Mich.
The Tide-Water Pipe Company, Limited.	Tide Water	Pennsylvania	Bradford, Pa.
Tidal Pipe Line Company	Tide Water	Oklahoma	Tulsa, Okla.
Toledo Northern Pipe Line Company.	Pure Gulf	Ohio	Chicago, Ill.
Transit & Storage Company	Esso	Delaware	Port Huron, Mich.
Treasure State Pipe Line Company	Ohio	Montana	Sunburst, Mont.
Tri-Lakes Corporation	Sohio	Delaware	Mt. Pleasant, Mich.
Tuscarora Oil Company, Ltd.	Esso	Pennsylvania	Harrisburg, Pa.
Union Oil Company of Nevada	Union	Nevada	Los Angeles, Calif.

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Union Steamship Company	Union	New Jersey	Los Angeles, Calif.
The United Oil Company	Cities Service Consolidated	California	Los Angeles, Calif.
United States Pipe Line Company	Pure	Pennsylvania	Chicago, Ill.
Utah Oil Refining Company	Stanolind	Utah	Salt Lake City, Utah.
Vacuum Oil Company (Delaware)	Socony	Delaware	New York, N. Y.
Valley Pipe Line Company	Texas	California	Los Angeles, Calif.
Wabash Pipe Line Company	Pure	Illinois	Chicago, Ill.
Wadhams Oil Company	Socony	Wisconsin	Milwaukee, Wis.
Waggoner Service Stations, Inc.	Socony	Illinois	Chicago, Ill.
Warner-Quinlan Company of Texas	Cities Service	Texas	Fort Worth, Tex.
Washington Refining Company	Shell	Washington	San Francisco, Calif.
West Coast Oil Company	Tide Water	California	San Francisco, Calif.
Westcott Oil Company	Continental	Idaho	Boise, Idaho.
Western Gulf Oil Company	Gulf	Delaware	Pittsburgh, Pa.
West-Harden Oil Company, Inc.	Pure	Virginia	Covington, Va.
White Eagle Pipe Line Company, Inc.	Socony	Kansas	Kansas City, Mo.
White Star Northern Oil Company	Socony	Michigan	Newberry, Mich.
Wilson Oil Corporation	Pure	Michigan	Detroit, Mich.
Woco-Pep Company of Tuscaloosa	Pure	Alabama	Tuscaloosa, Ala.
Wofford Oil Company (Alabama)	Pure	Alabama	Birmingham, Ala.
Wofford Oil Company of Georgia	Pure	Georgia	Atlanta, Ga.
Yount-Lee Pipe Line Company	Stanolind	Texas	Tulsa, Okla.

4. The following individuals, not made defendants herein, connected with the corporate defendants as indicated in the following table, have been active in the management of the Institute and have been actively engaged in the manage-

ment, direction, and control of the affairs and policies of the respective defendant majors and secondaries, particularly those affairs, activities, and policies hereinafter described in this complaint:

Name of individual	Affiliation
K. S. Adams	Director—Institute. President & Director—Phillips. Vice President & Director—Alco Royalty Corp. Director—Southern Phillips Corp.
C. E. Arnott	Director—Institute. Vice President & Director—Socony.
Amos Ball	Member of Marketing Committee—Institute. Director and Vice President—Stanolind.

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Charles J. Barkdull	Director—Institute. Executive Vice President & Director—Stanolind. Director—Stanolind Oil Purchasing Co. Director—Stanolind Pipe Line Co. Director—Pan American Petroleum & Transport Co. Director—Pan American Producing Co. Director—Pan American Refining Corp. Director—Mexican Petroleum Corporation of Georgia.
S. Belither	Director—Institute. Director—Shell. Director, Vice Chairman of Board & Executive Vice President—Shell Oil Co., Inc. Director & President—Washington Refining Co.
W. H. Berg	Member of Executive Committee—Institute. Director—Institute. Director & President—Socal. Director & President—The California Company (Calif.).
R. A. Broomfield	Director—Institute. Director & Executive Vice President—Barnsdall.
Edwy Rolfe Brown	Director—Institute. Director & Chairman of Board—Magnolia Petroleum Co. Director & Vice President—Socony. Director—Socony-Vacuum Oil Corp. Director & Chairman of Board—Magnolia Pipe Line Co.
John A. Brown	Member of Executive Committee—Institute. Director—Institute. Director, Chairman of Executive Committee & President—Socony.
Axtell J. Byles	President—Institute. Member of Executive Committee—Institute.
J. W. Carnes	Chairman of Board & Director—Richfield Oil Corporation of New York. Vice President & Director—Sinclair Refining Co. Member of Marketing Committee—Institute.
Sheldon Clark	Director & Vice President—Consolidated. Director & Vice President—Sinclair Refining Co.

Name of individual	Affiliation
Robert H. Colley	Member of Executive Committee—Institute. Director—Institute. President & Director—Atlantic. Vice President—Atlantic Pipe Line Co. Director & Vice President—Atlantic Oil Shipping Co. Vice President & Director—Buffalo Pipe Line Corp. Vice President & Director—Keystone Pipe Line Co.
H. D. Collier	Director—Institute. President & Director—Socal.
P. H. Curry	Director—Institute. President & Director—South Penn Oil Co.
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Ralph K. Davies	Director—Institute. Vice President—The California Company (Calif.). Vice President & Director—Socal. Member of Marketing Committee—Institute.
Henry M. Dawes	Member of Executive Committee—Institute. Director—Institute. President & Director—Pure.
T. A. Dines	Director—Institute. Chairman of Board & President—Utah Oil Refining Co. Director—Midwest Oil Company.
Henry W. Dodge	Vice President—Texas. Director—Goodyear-Wende Oil Corp. Director & Vice President—Indian Refining Co. Vice President & General Sales Manager—The Texas Company (Del.). Member of Marketing Committee—Institute.
O. D. Donnell	Treasurer & Director—Institute. Member of Executive Committee—Institute. Director & President—Ohio. Member of Production Committee—Institute.
J. Frank Drake	Director—Institute. President & Director—Gulf. President & Director—Gulf Refining Co. Director & Chairman of Board—Western Gulf Oil Co. Director & Chairman of Board—Gulf Research & Development Co.
W. S. Farish	Director—Institute. Member of Executive Committee—Institute. President & Director—Esso. Director—Ethyl Gasoline Corp.

Name of individual	Affiliation
W. H. Ferguson	Director—Institute. Director & Executive Vice President—Continental. Director & President—Rocky Mountain Pipe Line Co. Director & Vice President—The Boston-Wyoming Oil Co. Director & Vice President—Chappell Oil Co. Vice President—Continental Pipe Line Co. Director & Vice President—Merritt Oil Corp. Director & Vice President—The Buck Creek Oil Co. Director & Vice President—Fort Collins Producing Corp. Director & President—Merrico Royalties Co. Director & President—New Mexico Pipe Line Co. Director & Vice President—The Standard Shale Products Co. Member of Marketing Committee—Institute.
Jacob France	Director—Institute. Director & President—Mid Continent. Director—Great Lakes Pipe Line Co. Director—Theisen-Clemens Co. President—Cosden Pipe Line Co.
Alexander Fraser	Director—Institute. Director & President—Shell Oil Co., Inc. Director—Shell. Director & President—Shell American Petroleum Co.
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Harry D. Frueauff	Director—Institute. Director—Empire Gas & Fuel Co. Director & Vice President—Cities Service Oil Co. (Del.) Director & Vice President—Cities Service Oil Co. (Pa.). Director—Indian Territory Illuminating Oil Co. Member of Marketing Committee—Institute. Manager, Oil Departments—Cities Service.
Herbert R. Gallagher	Director—Institute. President & Director—Consolidated. Director—Richfield Oil Corp. Director & Chairman of Board—Sinclair Refining Co. Director, President & Chairman of Board—Commonwealth Petroleum Holding Co.
George J. Hanks	Director & President—Bradford Transit Co. Director & Vice President—Tide Water. Director & Vice President—Tidal Pipe Line Co.
D. W. Harris	Vice President & Director—Arkana Transit Corp. President & Director—Arkansas Pipeline Corp. Vice President, Director & General Manager—Arkansas Fuel Oil Co. President & Director—Orange State Oil Co. Vice President & Director—Lisbon Gasoline Co., Inc.
William V. Hartmann	Director—Institute. Director & Vice President—Gulf. Director & Vice President—Gulf Refining Co. Director & Vice President—Gulf Research & Development Co. Director—Detroit Southern Pipe Line Company. Member of Marketing Committee—Institute.
Edw. J. Henry	Director—Institute. Director & President—Atlantic Pipe Line Co. Director & Vice President—Atlantic. Director & President—Atlantic Petroleum Purchasing Co. Member of Refining Committee—Institute.

Name of individual	Affiliation
George A. Hill, Jr.	Director—Institute. Vice President for Production—Institute. Member of Executive Committee—Institute. Chairman of Production Committee—Institute. Chairman of Committee on Well Spacing—Institute.
W. T. Holliday	Director—Institute. President & Director—Sohio. President & Director—Latonia Refg. Corp. President & Director—Tri-Lakes Corp. President & Director—Fleet-Wing Corp. President & Director—Fordsville Gathering Line, Inc. President & Director—Sohio Producing Co. President & Director—Sohio Pipe Line Company. President & Director—Sohio Corp.
Wm. F. Humphrey	Director—Institute. Member of Executive Committee—Institute. President & Director—Tide Water. Director & President—Pantheon Oil Co. Director & President—Pioneer Midway Oil Co., Consolidated. Director & President—Reward Oil Co. Director & President—West Coast Oil Co. Director & President—Associated Oil Co. of Wyoming. Director—Sterling Oil & Development Co.
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Allan Jackson	Director & Vice President—Stanolind. Member of Marketing Committee—Institute.
Charles S. Jones	Director—Institute. President & Director—Richfield Oil Corp. President & Director—Reservoir Hill Gasoline Co. President & Director—Rio Grande Oil Company, Inc.
W. Alton Jones	Member of Executive Committee—Institute. Director & President—Cities Service. Director & Vice President—Arkansas Pipeline Corp. Director—Arkansas Fuel Oil Co. Vice President and Director—Empire Gas & Fuel Co. Director & Chairman of Finance Committee—Richfield Oil Corp. Director & Vice President—Indian Territory Illuminating Oil Co. Director—Institute.
Harry T. Klein	Director—Institute. Director—Texas Production Co. of Nebraska. Director—Goodyear-Wende Oil Corp. Director, Vice President and Member of Executive Committee—Texas. Director & Vice President—The Texas Co. (Del.). Director—Indian Refining Co. Director—Seaboard Oil Co. of Delaware.
F. A. Leovy	Director—Institute. Member of Executive Committee—Institute. Director & Vice Chairman of the Board—Gulf. Director & Chairman of the Board—Gulf Refining Co. Director & President—Western Gulf Oil Co. Director & President—Gulf Research & Development Co.

Name of individual	Affiliation
M. E. Lombardi	Director & Vice President—Socal. Vice President—The California Co. (Calif.). President—California Pipe Line Co. Member of Production Committee—Institute.
John M. Lovejoy	Director—Institute. Member of Production Committee—Institute. President—Seaboard Oil Co. of Delaware.
George MacDonald	Director—Cities Service. Director—Consolidated. Director—Petroleum Corp. of America. Director—Richfield Oil Corp.
A. M. Maxwell	Director & Vice President—Sohio. Director—Fleet-Wing Corp. Director—Atlas Supply Co. Director & Vice President—Latonia Refining Co. Director—Simrall Corp. Director & Vice President—Sohio Producing Co. Director & Vice President—Sohio Corp. Director & Vice President—Sohio Pipe Line Co. Director & Vice President—Tri-Lakes Corp.
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Wm. A. McAfee	President & Director—Ajax Pipe Line Corp. Director—Fuel Oil Corp. Director—Sohio. Director—Latonia Refining Corp. Director—Fleet-Wing Corp. Director—Simrall Corp. Director—Michigan-Toledo Pipe Line Co. Director—Sohio Producing Co.
R. W. McDowell	Director—Institute. Vice President in Charge of Sales—Mid-Continent. President & Director—Genessee-Diamond Oil Co. Vice President & Director—Baron-Huot Oil Co. Member of Marketing Committee—Institute.
Dan Moran	Director—Institute. Director & President—Continental. President & Director—Great Lakes Pipe Line Co. President & Director—The Boston-Wyoming Oil Co. President & Director—Chappell Oil Co. President & Director—Continental Oil Co. (Texas). President & Director—Continental Pipe Line Co. President & Director—Merritt Oil Corp. President & Director—The Busk Creek Oil Co. President & Director—Fort Collins Producing Co.
Harry Moreland	Director—Institute. Vice President & General Manager—Great Lakes Pipe Line Co.
J. Howard Pew	Director—Institute. Vice President for Refining—Institute. Member of Executive Committee—Institute. President & Director—Sun. Member of Production Committee—Institute. Chairman of Refining Committee—Institute. Director—Beacon Sun Company. President & Director—Motor Tankship Corp.

Name of individual	Affiliation
Frank Phillips	Director—Institute. Member of Executive Committee—Institute. Chairman of Board & Director—Phillips. President & Director—Alco Royalty Corp.
E. B. Reeser	Director—Institute. President & Director—Barnsdall. President & Director—Barnsdall Pipe Line Co. President & Director—Pittsburgh Oil & Gas Co. Member of Marketing Committee—Institute.
Torkild Rieber	Director—Institute. Chairman of Board, Director & Member of Executive Committee—Texas. Chairman of Board & Director—The Texas Co. (Del.). Director—Indian Refining Co. Director—Seaboard Oil Co. of Delaware. Director—Goodyear-Wende Oil Corp.
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W. S. S. Rodgers	Director—Institute. Member of Executive Committee—Institute. Chairman of Public Relations Committee—Institute. President, Director & Member of Executive Committee—Texas. Director & President—The Texas Co. (Del.). Director—The Texas Co. (Cal.). Director—Indian Refining Co. Director—Goodyear-Wende Oil Corp. Director—Great Lakes Pipe Line Co.
L. P. St. Clair	Director—Institute. Director, Former President & Former Chairman of Board—Union. Former Director & President—California Coast Oil Co. Former Director—Claremont Oil Co.
E. H. Salrin	Director—Institute. Vice President & Director—Tide Water. Vice President & Director—Tidal Pipe Line Co. President & Director—Great Southern Oil Co. Member of Production Committee—Institute.
Edward G. Seubert	Director—Institute. Member of Executive Committee—Institute. President & Director—Stanolind. Director & Vice President—Mexican Petroleum Corporation of Georgia. Director & Vice President—Pan American Petroleum & Transport Co. Director & Vice President—Pan American Refining Corporation. Director & Vice President—Pan American Production Co. Director—Pan American Southern Corp. Director & Vice President—Stanolind Oil Purchasing Co. Director & Vice President—Stanolind Pipe Line Co. Director—Pan American Petroleum Corp.
E. W. Sinclair	Director—Institute. Director, Chairman of Finance Committee & Executive Vice President—Consolidated. President & Director—Sinclair Refining Co. Director & Treasurer—Petroleum Corp. of America. Director—Commonwealth Petroleum Holding Co. Director—Great Lakes Pipe Line Co.

Name of individual	Affiliation
Harry F. Sinclair	Director—Institute. Member of Executive Committee—Institute. Director & Chairman of Executive Committee—Consolidated. Chairman of the Board & Director—Richfield Oil Corp. Director—Petroleum Corp. of America.
Warren A. Sinsheimer	Director—Arkansas Pipeline Corp. Director—Arkansas Fuel Oil Co. Director—Empire Gas & Fuel Co. Vice President & Director—Empire Pipeline Co. Director—Cities Service Oil Co. Director—Indian Territory Illuminating Oil Co.
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W. G. Skelly	Director—Institute. Member of Executive Committee—Institute. President & Director—Skelly. Director & President—Mission Corp. Director & President—Pacific Western Oil Corp. Director—Great Lakes Pipe Line Co. President & Director—Skelco Products Co. President & Director—East Texas Refining Co.
Wm. E. Smith	Director—Institute. President & Director—Soky. President & Director—Refiners Oil Corp.
W. L. Stewart, Jr.	Director—Institute. Vice President & Director—Union. Vice President & Director—Union Steamship Co. Director—Claremont Oil Co. Vice President & Director—Lake View Oil Co. Director—Los Angeles Oil Co. Member of Refining Committee—Institute.
Herbert R. Straight	Director—Institute. Director—Empire Gas & Fuel Co. President, Director & General Manager—Cities Service Oil Co. President, General Manager, & Director—Empire Pipeline Co. Director—Richfield Oil Corp. Director—Texas Empire Pipe Line Co. (Del.). Director—Cities Service. Director—Great Lakes Pipe Line Co.
Sidney A. Swensrud	Vice President—Sohio. Director—Fleet-Wing Corp. Director—Commercial Oil Co. Director—Eagleroc Oil Co. Director—Ohio Independent Oil Co. Director—Ridge Oil Corp. Director & Assistant Secretary—Fordsville Gathering Line, Inc. Director & Assistant Secretary—Simrall Corp. Director & Assistant Secretary—Michigan-Toledo Pipe Line Co. Assistant Secretary—Sohio Corp. Director—Berea Engineering Co. Vice President & Assistant Secretary—Sohio Pipe Line Company. Director & Vice President—Ohio River Pipe Line Co.
Reese H. Taylor	Director—Institute. Director & President—Union.
Walter C. Teagle	Director—Institute. Chairman of Board—Esso. Director—Ethyl Gasoline Corp.

Name of individual	Affiliation
Temple W. Tutwiler	President & Director—Arkansas Fuel Oil Co. Vice President & Director—Arkansas Pipeline Corp. Director & President—Cities Service Oil Co. (Pa.) Vice President & Director—Empire Gas & Fuel Co. Vice President & Director—Indian Territory Illuminating Oil Co. Director—Richfield Oil Corp. Director—Cities Service. Director—Orange State Oil Company.
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R. G. A. van der Woude	Director—Institute. Member of Executive Committee—Institute. President & Director—Shell. Director & Chairman of Board—Shell Oil Co., Inc. Director—Asiatic Petroleum Corp.
W. G. Violette	Vice President & Director—Soky. Vice President & Director—Refiners Oil Corp. Member of Marketing Committee—Institute.
Cornelius B. Watson	Director & Vice President—Pure. Director—Great Lakes Pipe Line Co. Director—Hickok Oil Corp. President & Director—Detroit Southern Pipe Line Co. President & Director—Pure Transportation Company. Member of Refining Committee—Institute. Member of Marketing Committee—Institute.
Earle W. Webb	Director—Institute. Director & President—Ethyl Gasoline Corp.
A. L. Weil	Director & President—General Pipe Line Co. (Cal.). Director & President—General Petroleum Corp. of California. President—General Petroleum Corp. of Nevada.
H. C. Wiess	Director—Institute. Director & President—Humble Oil & Refining Co.
L. S. Wescoat	Director—Institute. Director, Vice President & Secretary—Pure. Director—Hickok Oil Corp.
Charles J. Yokum	President & Director—Petroleum Transit Corp. Member of Central Committee on Public Relations—Institute. Chairman of sub-committee on Contract & Bulk Hauling—Institute.

II

Jurisdiction and Venue

5. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," said Act being commonly known as the "Sherman Antitrust Act," and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 730, as amended, said Act being commonly known as the "Clayton Act,"

[fol. 135] against the above-named defendants in order to prevent and restrain violations by them of Sections 1, 2 and 3 of the Sherman Act and Sections 2 and 3 of the Clayton Act.

6. The alleged unlawful acts and violations hereinafter described, including the unlawful monopoly, attempts to monopolize, combinations and conspiracies to monopolize, and contracts, combinations and conspiracies to restrain trade and commerce in petroleum and its products among the several States of the United States, with foreign nations and within the District of Columbia, have been and are conceived, carried out, and made effective in part within the District of Columbia, and many of the unlawful acts done in pursuance thereof have been performed by the defendants or some of them and their respective representatives within said District. The following defendants transact business or may be found within the District of Columbia: American Petroleum Institute; Phillips Petroleum Company; The Texas Company (Delaware); Lord Baltimore Filling Stations, Inc.; Sun Oil Company; Gulf Oil Corporation; Standard Oil Company of New Jersey; Sherwood Brothers, Incorporated; Petroleum Heat & Power Company; Shell Oil Company, Inc.; The American Oil Company (Md.); The Atlantic Refining Company; Cities Service Oil Company (Pa.); Continental Oil Company; Sinclair Refining Company; Gulf Refining Company; Richfield Oil Corporation of New York; and Tide Water Associated Oil Company. The interstate trade and commerce involved in the petroleum industry is carried on in part within the District of Columbia.

[fol. 136]

III

Interstate Commerce Involved

7. Crude oil moves in interstate commerce from centers in producing states to refineries located in other states. Such interstate movement is carried on mainly through the trunk pipelines operating in 21 states and transporting approximately one billion barrels of crude oil per year. The trunk pipelines also carry crude oil from producing states to water terminals from which it is moved by tanker to refineries located in other states and to foreign nations. Crude oil also moves in interstate commerce between points of production and refineries by means of barges, lake

tankers, railroad tank cars, and trucks. The principal petroleum products move in interstate and foreign commerce from the refineries to distribution and consuming points throughout the United States and to foreign nations by means of gasoline pipelines, railroad tank cars, trucks and trailers, tankers, barges, and tank wagons. There is a continuous flow of petroleum products in interstate commerce from the refinery to the tank of the consumer. Gasoline pipelines, tankers, barges, tank cars, bulk plants, tank wagons, and service stations are merely facilities in this flow. The transfer from one facility to the other is merely a convenience in handling petroleum products and does not interrupt the continuous interstate flow which begins at the refinery and ends at the consumer's container. Practically all the defendant majors and producing secondaries are engaged in the production and purchase of crude oil in the producing states and move and transport crude oil in interstate commerce through defendant controlled pipelines from [fol. 137] states where produced or purchased to refineries located in other states. Defendant majors and marketing secondaries engage in the movement of the principal petroleum products in interstate commerce from refineries to consumers' containers throughout the United States.

IV

Description of the Industry

8. The petroleum industry is divided into four branches —production, transportation, refining and marketing. Crude oil is produced from subsurface deposits known as crude oil reserves. While the known reserves cannot be inventoried with any degree of certainty, the total recoverable reserves estimated by geologists as of January 1, 1940, amounted to over eighteen billion barrels. Fear of the exhaustion of these reserves has prompted the adoption of conservation programs, rationing the production of crude oil by the various fields, pools, and wells, which are administered by designated agencies of the state and federal government.

9. Crude oil is produced from more than 375,000 oil wells producing approximately 1,250,000,000 barrels per year. The producing wells are located in 23 states, but 84 percent of the total production is contributed by wells located in

the states of Texas, Oklahoma, California, Illinois and Louisiana.

10. Crude oil moves usually through gathering pipelines which take the crude oil at the well and transport it directly to a refinery located in the field or to a trunk pipeline which transports the crude oil either to the refinery or to a water terminal from which it is in turn shipped to the refinery by [fol. 138] tanker or barge. There are 52,000 miles of gathering lines, of which 75% are common carriers by statute. While there may be several gathering systems in one field, each one reaching hundreds of wells, no well is connected with more than one system. A very small quantity of crude oil moves overland by truck and railroad but the cost of these forms of transportation is greater than the cost of transportation through pipelines.

11. There are 60,000 miles of crude oil trunk lines 87% of which are common carriers subject to the jurisdiction of the Interstate Commerce Commission.

12. Where feasible the cheapest method of transporting crude oil is by tanker or barge and large quantities of crude oil are shipped by this method.

13. There are 547 refineries located in 35 states. These refineries are located, for the most part, at places to which adequate supplies of crude oil may be economically transported.

14. The refineries themselves are of two general types; those utilizing simple distillation processes, and those utilizing the more recently developed patented "cracking" processes which are not only more economical but have made it possible over the last twenty years to increase the average recovery of gasoline from crude oil from 26 to 45 per cent.

15. The total daily capacity of these refineries is 4,625,000 barrels. Refineries located in Texas, California, Pennsylvania, Illinois, Indiana, Oklahoma, New Jersey, and Louisiana have over 81 per cent of the capacity. The total daily runs to stills is approximately 3,400,000 barrels, and the principal products produced are gasoline fuel oils, kerosene, and lubricants.

[fol. 139] 16. Petroleum products are transported from refineries to the consuming areas usually by pipelines,

tankers and tank cars when the refinery is located near the oil fields and away from the consuming area, and by tank car, tank truck and trailer, and tank wagon when the refinery is near the area of consumption. The gasoline pipeline, which is the most economical method of transporting petroleum products overland, has been developed almost wholly since 1930 and today there are about 8,000 miles of such lines connecting refineries and tanker terminals with the consuming areas. Approximately 66% of gasoline pipelines are common carriers subject to the jurisdiction of the Interstate Commerce Commission.

17. Upon reaching the consuming areas the petroleum products are stored in 27,000 local terminals and bulk plants for distribution to 200,000 service stations, to approximately the same number of other establishments selling petroleum products, and to commercial consumers.

18. Thousands of individuals and hundreds of corporations engage in the petroleum industry which represents an investment of approximately fifteen billion dollars and is exceeded in size only by agriculture, the railroad industry, and the combined divisions of the utility fields. This investment is distributed among the four principal divisions as follows: production—43%, transportation—17%, refining—27%, and marketing—13%. In the producing branch of the industry, thousands of small landowners and others own or operate oil wells or collect royalties on oil produced. [fol. 140] There are approximately 100 companies engaged in transportation of petroleum products as a sole function. Approximately 200 companies operate the refineries. The marketing of petroleum products is carried on by approximately 25 large companies and their subsidiaries, 8,000 individual and incorporated brokers, jobbers and distributors, 200,000 service station operators, and 200,000 merchants who sell petroleum products in conjunction with other merchandise.

19. The key characteristic of the industry today is complete integration, the culmination of a twenty-five year trend. Today the 22 fully integrated oil companies, called majors, control the 344 secondary companies which are engaged in one or more of the functions of production, transportation, refining and marketing. With their secondary companies the majors form 22 completely integrated

units, each unit thus operating in all four branches of the industry. Joint ownership of some of the secondary companies is part of the pattern of the industry. These companies have total assets on a consolidated basis of approximately nine billion dollars. Their individual assets are as follows:

Name of Company:	Total assets
The Atlantic Refining Company	$203,400,377
Barnsdall Oil Company	23,762,319
Cities Service Company	1,068,578,765
Consolidated Oil Corporation	357,848,818
Continental Oil Company	127,661,986
Gulf Oil Corporation	523,292,917
Mid-Continent Petroleum Corporation	65,103,571
The Ohio Oil Company	133,748,393
Phillips Petroleum Company	223,280,318
The Pure Oil Company	178,567,387
Shell Union Oil Corporation	401,048,417
Skelly Oil Company	62,048,509
Socony-Vacuum Oil Company, Incorporated	929,066,796
Standard Oil Company of California	628,618,202
Standard Oil Company (Indiana)	723,079,697
Standard Oil Company (Kentucky)	42,697,777
[fol. 141]	
Standard Oil Company (New Jersey)	$2,034,989,485
The Standard Oil Company (Ohio)	76,072,531
Sun Oil Company	146,431,484
The Texas Corporation	661,067,032
Tide Water Associated Oil Company	204,467,844
Union Oil Company of California	187,066,399

20. These 22 integrated companies occupy a position of great dominance in the industry. They own or control over sixty-five per cent of the known crude oil reserves, thirty-two percent of the oil wells (and the oil wells of the majors produce fifty per cent of the total production), ninety-two per cent of the stocks of crude oil, eighty per cent of the crude oil storage capacity, seventy-six per cent of the crude-oil refining capacity, eighty-eight per cent of the cracking capacity; produce eighty-five per cent of the gasoline refined; possess ninety per cent of the stocks of finished gasoline, ninety-two per cent of the stocks of fuel oil, ninety-

one per cent of the stocks of kerosene, ninety-three per cent of the stocks of lubricants, and eighty-eight per cent of the stocks of gas oil and distillate fuel oils; and control seventy-five per cent of the bulk plants, and seventy-five per cent of the service stations. In the transportation branch of the industry the majors own or control fifty-seven per cent of the crude oil gathering lines, eighty-five per cent of the crude oil trunk pipelines, eighty-seven per cent of the deadweight tonnage of oil tankers and ninety-six per cent of the mileage of gasoline pipelines.

21. The position of the majors in this industry is indicated in the following chart:

[fol. 142]

Phases and functions	Number of majors	Percent of ownership or control
Investment	22	60.0
Crude Oil Reserves	21	68.0
Number of Producing Oil Wells	21	32.4
Crude Oil Production	21	50.0
Crude Oil Gathering Pipe Line Mileage	21	57.5
Ratio of Purchases of Crude Oil to Total U. S Production	20	56.8
Ratio of Crude Oil Transported in Gathering Lines to Total U. S. Production	[1] 20	62.5
Crude Oil Trunk Pipe Line Mileage	20	85.6
Barrel-Miles of Crude Oil Transported in Trunk Lines [2]	15	96.5
Investment in Crude Oil Pipe Lines [2]	15	89.3
Income of Crude Oil Pipe Lines [2]	15	97.7
Stocks of Crude Oil	21	92.5
Crude Oil Storage Capacity	21	79.1
Imports of Crude Oil	6	90.6
Exports of Crude Oil	14	66.7
Crude Oil Refining Capacity	21	76.1
Crude Oil Runs to Stills	21	82.7
Cracking Capacity	21	87.6
Production of Gasoline	21	84.6
Stocks of Finished Gasoline	[1] 20	90.0
Exports of Gasoline	14	95.0
Ratio of Domestic Sales of Gasoline to Total U. S. Consumption	22	87.1
Gasoline Pipe Line Mileage	[1] 17	96.3
Barrel-Miles of Gasoline by Pipe Lines	15	96.5
Investment in Gasoline Pipe Lines [2]	12	100.0
Income of Gasoline Pipe Lines [2]	12	100.0
Deadweight Tonnage of Oil Tankers	15	87.2
Stocks of Lubricants	[1] 19	93.0
Stocks of Kerosene	[1] 19	91.2
Stocks of Gas Oil and Distillate Fuel Oils	[1] 19	88.1
Stocks of Residual Fuel Oils	[1] 20	92.0
Number of Domestic Bulk Plants	[1] 20	74.7
Number of Service Stations	22	75.0

[1] Data for all defendant majors not available.
[2] Coverage of the Interstate Commerce Commission only.

The dominance of the defendant majors has been steadily increasing while the position of all others in the industry,

commonly known as "independent" producers, refiners, marketers, and service station operators, has been steadily decreasing.

22. In addition to the control by the majors over pipeline transportation hereinbefore described their control over transportation facilities is implemented by long term charter parties which they induce the owners of uncontrolled tankers and barges to enter into by paying rates in [fol. 143] excess of those economically feasible for the independent producers and refiners. Further, the majors reduce transportation costs for themselves by the use of so-called exchange accounts. Under this system one refiner will deliver gasoline or other products to the local storage facilities of another refiner in return for a similar accommodation by the latter refiner in some other area. Such exchange arrangements are rarely made with independent refiners.

23. The control by the majors over the marketing facilities for petroleum products is gained through their outright ownership of bulk plants and contracts with the owners of bulk plants requiring the owners to deal only in the products of the particular defendant, and through ownership, leases, exclusive dealing contracts, and offering inducements to other operators to enter into exclusive dealing arrangements in the case of service stations. Some of the service stations the majors own or lease and operate themselves; other stations they own or lease and sublease to operators under the "Iowa Plan." Under this plan which has been put into effect mainly in the states east of the Rocky Mountains, the majors lease or sublease service stations to operators who are given possession under uniform leases adopted by the majors which contain a short term cancellation provision. These leases do not provide for the exclusive handling of the lessor's petroleum products, but the majors have the power, through threatening to cancel the lease by exercising the short term cancellation clause, to force the operator to handle the lessor's petroleum products exclusively and to sell them at the prices dictated by the [fol. 144] lessor; the lessor also cancels leases when the operator fails to maintain or increase the predetermined gasoline gallonage which forms the basis for calculating rent, or when the operator refuses to purchase supplies of automotive equipment from the lessor or the persons desig-

nated by him. In addition, the majors have the power to force operators to maintain or increase the predetermined gasoline gallonage by dictating the reduction of sales prices without making a corresponding reduction in the price at which the operator purchases the gasoline.

24. Non-lessee service station operators are induced to enter into exclusive dealing contracts requiring the operators to buy all of their gasoline or other petroleum products from the particular major company by granting them a special discount which is not granted to those who buy from more than one supplier, by operating a nation-wide credit service in which the supplier guarantees the credit of those purchasing from the operators; by guaranteeing margins; by loaning money and equipment; and by threatening ruinous competition.

V

Offenses Charged

25. Each of the defendants and the defendants collectively have violated and are now violating Sections 1, 2 and 3 of the Sherman Act, by unlawfully attempting to monopolize, monopolizing and contracting, combining and conspiring to regulate, control, dominate, monopolize, and restrain trade and commerce among the several states of the United [fol. 145] States, with foreign nations, and within the District of Columbia and have violated and are now violating Sections 2 and 3 of the Clayton Act in the manner and by the means hereinafter described:

The Institute

26. The defendants have unlawfully combined to create, maintain, and utilize the Institute and its national, regional, state and local committees as instrumentalities for promoting, supervising and enforcing policies, programs, practices, and activities of the defendants designed to restrict the production of crude oil and petroleum products, to establish and maintain sales prices for petroleum and its products, to manipulate prices in order to restrict or eliminate competition among the defendants, to deprive others of a fair opportunity to compete freely and unrestrictedly with the defendants, and to enable the defendants to dominate, control and monopolize the petroleum industry in all its

phases. The managing officials of the Institute and the members of the various committees are the officers and other representatives of the majors and secondaries made defendant herein.

Controlling and Restricting the Production of Crude Oil and Manufacture of Petroleum Products

27. Defendants are jointly and individually acquiring an increasingly dominant control over the known crude oil reserves of the United States through purchase and lease and on option.

28. The defendants have combined and conspired to restrict the production of crude oil and the manufacture of [fol. 146] petroleum products. The defendants report weekly to the Institute the amounts and locations of all stocks of petroleum products owned or held by each of them on the last day of each preceding week and cause the Institute to summarize such detailed information and disseminate it, together with the Institute's suggestions of the amounts of crude oil which should be produced and the Institute's suggestions of the amounts of petroleum products which should be manufactured and maintained in storage, to defendants and the public. The suggested amounts of crude oil to be produced are less than the amounts which would normally be produced even in states operating under conservation programs, and the suggested amounts of petroleum products to be manufactured and maintained in storage are less than the amounts which would normally be manufactured and maintained in storage. The defendants adopt the suggestions of the Institute, thereby curtailing the amounts of crude oil produced and the amount of petroleum products manufactured. The defendants, the Institute, and its production and refining committees and sub-committees, also promote individual and point agreements, among defendants and independent producers and refiners, and associations of producers and refiners, to restrict production of crude oil and to restrict the manufacture of petroleum products to the amounts suggested by the Institute.

29. Defendants have combined and agreed to follow the practice of receiving, in their crude oil gathering lines, from independent producers who have only one market because

[fol. 147] there exists no other practical means of transportation, less crude oil than the amounts which they would normally produce and, in states operating under conservation programs, less than the prorated allowables fixed by state proration authorities, thereby reducing the amount of crude oil produced by the independent producers.

The Pricing of Crude Oil

30. Defendants have combined and conspired to fix and maintain uniform non-competitive prices to be paid by them for the crude oil purchased from independent producers. In order to maintain uniform prices, the defendants agree that one of them will post, in each crude oil field or pool, the agreed upon prices. The defendants also agree that each of them will post and follow the prices posted by the designated defendant in each of the pools and fields in which they purchase crude oil. In fields where independent refiners compete with defendants in purchasing crude oil, defendants fix higher prices for crude oil, without reference to its specific gravity, than they fix in fields where defendants control production and gathering lines. Since the net cost of crude oil to defendants is lower than the prices posted in those fields where the defendants fix the higher prices, due to low cost production and purchases elsewhere, the independent refiners, who are forced to rely solely upon purchases in those fields, cannot obtain crude oil supplies on a competitive cost basis with defendants and as a result are driven out of business.

31. The defendants also have combined and conspired to fix and maintain uniform non-competitive prices to be charged by them in sales of crude oil to independent refin- [fol. 148] ers. Through their activities, defendants control practically all of the supply of crude oil available for refining, and independent refiners, most of whom do not have independent sources of crude oil, are compelled to purchase all or a large part of their requirements from defendants. Defendants follow the practice of selling crude oil to independent refiners at fixed prices which are arrived at by adding to the fixed price for crude oil the agreed upon published tariff rates for pipeline transportation and arbitrarily adopted rates for gathering and storing of such oil, thereby placing independent refiners at a substantial price disadvantage over the defendants in procuring crude oil

supplies, and, in addition, independent refiners directly pay tribute to the defendants on purchases of crude oil to the extent of the excessive amounts charged them for gathering transportation and storage.

Transportation

32. Defendants, controlling pipeline gathering systems leading from producing wells to the defendants' crude oil trunk pipelines, are jointly and individually following the practice of compelling independent producers, who have no other practical means of transportation to competitive markets, to sell crude oil to the defendants at the well rather than permitting them to use such lines on a common carrier basis and reach those markets in which they might sell their production. Defendants thereby gain control of the crude oil produced by such independent producers.

33. Defendants are concertedly causing those defendants, who individually and jointly own and operate interstate crude oil trunk pipelines and interstate gasoline pipelines, to adopt and file with the Interstate Commerce Commission, tariffs, rules and regulations, covering the interstate transportation of crude oil, gasoline and other petroleum products, which require that shippers tender to such carriers unreasonably large quantities, commonly called "minimum tenders," of crude oil and petroleum products, to maintain and charge uniform non-competitive onerous and oppressive rates for the transportation of crude oil, and uniform non-competitive, onerous and oppressive rates at rail freight rate levels irrespective of the cost of service for the transportation of petroleum products and to fail to provide to shippers the ordinary common carrier terminal facilities at both ends of and along the pipelines. These tariff requirements are put into effect for the purpose and with the effect of reserving such pipelines as private carriers for the defendants who are large shippers advantageously located at existing terminals along the pipelines, despite the fact that these crude oil trunk pipelines have been common carriers by statute for many years and these gasoline pipelines have been common carriers by statute since installation. The result is that independent producers and refiners are precluded from using the crude oil trunk pipelines on a common carrier basis in violation of Section 1 of the Act to Regulate Commerce, and from

[fol. 149]

locating their refineries at advantageous points along such pipelines or at their terminals in large consuming areas, to restrain the interstate transportation of crude oil, and to obtain for defendants a monopoly of crude oil. The result is also to preclude independent refiners and distributors [fol. 150] from using gasoline pipelines on a common carrier basis, in violation of Section 1 of the Act to Regulate Commerce, and from marketing their products in the consuming areas served by these pipelines, and to restrain the interstate transportation of petroleum products.

34. The defendants have combined and conspired to charge excessive rates for the use of crude oil and gasoline pipelines and to receive back as refunds and rebates on the rates charged to themselves a substantial part of the revenue from pipeline operations in violation of Sections 2 and 6 of the Act to Regulate Commerce, as amended, and Section 1 of the Elkins Act, as amended. These rebates result in crude oil and petroleum products being transported for defendants at less rates than those named in the tariffs published and filed by the pipelines and are used by defendant owners to subsidize operations in other branches of the industry thereby enabling them to enjoy an unfair competitive advantage over their independent competitors who are unable to use such pipelines under the terms, conditions, and regulations imposed by the defendants.

35. Defendants have combined and conspired to cause railroads to establish and maintain rates favorable to them and unfavorable to the independent refiner.

36. Defendants jointly and individually exert influence upon and connive with officials, traffic managers, and other employees of railroad companies, which haul petroleum products in interstate commerce throughout the United States, to cause these railroad companies to establish and maintain high rail freight rates on long hauls of petroleum products from areas where independent refiners are located [fol. 151] to consuming areas where defendants dominate, control, and monopolize the distribution and sale of petroleum products. These rates prevent independent refiners from competing with defendants in the distribution and sale of petroleum products and maintain the transportation factor used as part of the price-fixing program hereinafter described.

37. Defendants jointly and individually exert influence upon and connive with officials, traffic managers and other employees of railroad companies, which haul petroleum products in interstate commerce throughout the United States, to cause these railroad companies to establish and maintain agreed upon low rail freight rates on transportation of petroleum products in interstate commerce from the refineries, pipeline terminals and water terminals of defendants to points of distribution located in the consuming areas where defendants dominate, control and monopolize the distribution and sale of petroleum products. This enables defendants to obtain the advantages of low rail freight rates which discriminate against independent refiners who are attempting to market petroleum products in interstate commerce in competition with defendants.

38. In carrying out the program for the establishment and maintenance of rail freight rates as hereinabove described, defendants are jointly and individually resorting to the practice of threatening to build and utilize more gasoline pipelines, to increase the use of motor trucks, to increase the use of tanker and barge facilities and to refuse to use rail transportation facilities unless the railroads establish and maintain rates agreeable to defendants.

[fol. 152] 39. Defendants are jointly and individually acquiring and maintaining a dominating control over tankers, barges, tank cars, and other facilities for the interstate transportation of crude oil and petroleum products, by purchase, long term contracts and leases. Defendants have combined and conspired to maintain and establish and to induce others to maintain excessive rates for the use of such facilities, thereby preventing their use by independent competitors.

Marketing Policies and Price Differentials

40. Defendants have combined and conspired to distribute their petroleum products at wholesale only through facilities operated by persons, firms, or corporations whose buying, selling and operating policies defendants are able to control. They have obtained such control over practically all of the thousands of bulk plants, located throughout the United States, through which petroleum products pass in interstate commerce from refiners to service stations and

consumers' containers. Control of these bulk plants is obtained through exclusive dealing contracts with jobbers and distributors and by forcing, through the use of unfair practices, independent refiners, jobbers and distributors to sell or lease them to defendants. These practices include threats of ruinous competition, promises of guaranteed margins, making of unwarranted and excessive loans of money on bulk plants, and the offering of free equipment and other valuable property and services to the service station customers of such refiners, jobbers and distributors. Defendants use these bulk plants for the exclusive distribution [fol. 153] of their petroleum products, either by direct operation or through distributors under exclusive contracts or exclusive commission agents to whom the plants are leased. By the means, methods and practices described defendants are denying the use of existing bulk plant facilities to independent refiners and jobbers and are monopolizing the essential facilities for the distribution of petroleum products and petroleum products themselves.

41. Defendants are combining and conspiring to distribute their petroleum products only through service stations operated by persons, firms and corporations whose buying, selling, and operating policies defendants are able to control. Such control is acquired through ownership, leases, subleases, exclusive dealer contracts, granting of differentials in price to exclusive operator-purchasers while denying them to competing non-exclusive operator-purchasers of petroleum products of like grade, quality and quantity, in violation of Section 3 of the Robinson-Patman Act; granting nation-wide credit card service to exclusive operators, offering inducements such as loans of money and guaranteed margins, loaning of equipment, and threats of ruinous competition, for the purpose of monopolizing service station outlets. The granting of differentials in price to exclusive service station operators is also a discrimination in violation of Section 2, as amended, of the Clayton Act.

42. Defendants marketing gasoline throughout the United States, and particularly throughout the 43 states east of the Rocky Mountains and in the District of Columbia, have unlawfully combined and conspired to put into effect and maintain the so-called "Iowa Plan." Under this plan [fol. 154] defendants lease service stations, which they control by ownership or lease, to lessee-operators and com-

pel those operators to handle exclusively the particular lessor's brand of petroleum products. These lessee-operators are given possession of the service stations under uniform leases, adopted by defendants, which specify the term of occupancy, the rental and other lease provisions, including a short term cancellation clause. These leases do not provide for the exclusive handling of the defendants' petroleum products, but defendants are requiring each lessee-operator to handle the petroleum products of the lessor exclusively and compel him to refuse to distribute, display, or handle any petroleum products of a competitor. Defendants compel the lessee-operator to maintain or increase the predetermined gasoline gallonage which forms the basis for calculating the rental of the service station. Defendants fix and dictate the prices at which lessee-operators shall sell defendants' petroleum products. To effectuate the plan, defendants threaten to and do cancel the leases on service stations and dispossess lessee operators by exercising the short term cancellation clause of the lease when the lessee-operator refuses to handle lessor's petroleum products exclusively, or upon lessee-operator's refusal to sell the petroleum products at the prices dictated by defendant lessor. The defendants' operations under the Iowa Plan have eliminated competition among defendants and deprived independent refiners, jobbers and distributors of outlets for the marketing of their petroleum products in competition with defendants.

[fol. 155] 43. Defendants have combined and conspired to adopt uniform types of contracts for the sale of petroleum products in interstate commerce to jobbers, distributors, commission agents, non-lessee service station operators and commercial consumers. Each of these contracts contains non-competitive, oppressive and onerous terms and requires that the purchaser shall buy all of his requirements of petroleum products from the particular defendant with whom the contract is executed. Each major and secondary oil company defendant marketing petroleum products forces all their purchasers to execute and abide by the terms of the uniform contract applicable to them. The exclusive dealing provisions of these uniform contracts are also in violation of Section 3 of the Clayton Act.

44. Defendants have combined and conspired to sell petroleum products to operators and lessees of service stations under arrangements requiring them to handle exclusively the petroleum products of one of the defendants. This is accomplished by sales contracts which provide, and sales on oral condition, agreement and understanding, that such purchasers shall not deal in any petroleum products of a competitor or competitors of the particular defendant. The exclusive dealing provisions of the contracts for sale of petroleum products in interstate commerce and the sale of petroleum products in interstate commerce made under the oral arrangements are also in violation of Section 3 of the Clayton Act.

45. Defendants are concertedly following the practice of selling complete and full lines of petroleum products through service stations controlled by them and forcing [fol. 156] the operators of service stations to handle exclusively their full lines of petroleum products by threatening to invoke the clause of the leases providing for cancellation on short notice, cancellation of the leases, cancellation of supply contracts, and refusing to sell petroleum products on the exclusive price basis to operators who do not handle their full lines.

Price Fixing

46. Defendants have combined and conspired to adopt a price-fixing program, and defendants concertedly agree upon sales prices for petroleum products, marketing and price policies, and methods and practices for fixing and maintaining prices, for stabilizing price structures, for lowering prices wherever they wish to eliminate independent competitors, and for raising prices wherever the competition of independent competitors has been eliminated. These agreements are reached at frequent meetings held throughout the United States under the auspices of the defendant Institute, its marketing committee and subcommittees, and apart therefrom, attended by the officers and other representatives of the defendant majors and secondaries, and others unknown to plaintiff, acting for and on behalf of the defendants.

47. As part of the price-fixing program, defendants have agreed to utilize and are utilizing a pricing formula,

of which the basic factor is the price for principal petroleum products at either spot markets or other base points arbitrarily selected by defendants. The spot market prices are the quotations selected by defendants for spot markets for which certain trade journals currently publish such quota-
[fol. 157] tions. The base prices at the other base points are prices arrived at by adding to the spot market quotations existing freight rates between spot market locations and the other base points. The prices at these base points are adopted irrespective of the cost of such petroleum products at the points from which shipments are actually made. To the prices at the base points are added all rail freight rates to final destinations as a factor in the pricing formula, irrespective of the actual point of origin of the product, and the transportation facility actually used. Prices for petroleum products at final destinations are arrived at by adding the margins allowed by defendants to distributors and retailers as another factor in the formula. In selling to jobbers, distributors and other large quantity purchasers of petroleum products for resale, defendants charge all rail freight rates from base points to purchasers' destinations in addition to the base prices, although such petroleum products actually move in interstate commerce from points of origin other than base points and at costs to defendants less than all rail freight rates. By carrying out this scheme, defendants are able to maintain the factors of their price-fixing formula and exact from purchasers and consumers amounts of money in excess of those actually expended by defendants for transportation from actual points of origin to purchasers' destinations.

48. In order to raise, fix, peg and stabilize spot market prices of gasoline and other petroleum products, defendants purchase, at agreed upon artificially high and non-competitive prices, quantities of those commodities from sellers, mainly independent refiners who sell in the spot markets and elsewhere at prices below those fixed by de-
[fol. 158] fendants. Defendants cause such sellers to report to the trade journals the high, fixed prices paid by defendants rather than the lower spot market prices at which the sellers sell to purchasers other than the defendants. The reporting of the agreed upon high prices paid by defendants misleads the trade journals and causes them to publish the fixed spot market prices rather than the lower

competitive prices at which gasoline and other petroleum products are being sold currently, thereby making effective and maintaining the fixed, high prices agreed upon by defendants. Such purchasing programs have been organized and utilized by defendants in refining areas throughout the United States and purchases have been made through them from sellers located in the states of California, Wyoming, Montana, Texas, Louisiana, Oklahoma, Kansas, Arkansas, Kentucky, Illinois, Michigan, and Pennsylvania. To facilitate the operation of these purchasing activities, defendants have promoted and organized corporations and voluntary membership organizations among independent refiners. Such purchasing activities monopolize available supplies of those petroleum products; prevent those products from moving in interstate commerce to consuming areas for sale in competition with defendants' products at prices lower than those agreed upon by defendants; artificially raise, fix, peg and stabilize the prices of petroleum products in spot markets; increase, fix and maintain tank car prices of gasoline and petroleum products contracted to be sold and sold in interstate commerce; and increase wholesale and retail prices throughout the United States.

[fol. 159] 49. Defendants concertedly fix and maintain uniform, excessive and exorbitant price differentials between the various grades of gasoline, that is, third, regular, and premium, thereby exacting unreasonably high prices from jobbers, distributors, service station operators and the consuming public.

50. As a further part of the price-fixing program, defendants concertedly cause a selected defendant to post and publish the agreed upon prices for the sale of petroleum products in tank car, tank wagon, barrel and gallon lots in designated areas of the United States. The following companies have been selected to post prices in the designated areas:

Selected Company:	*States in designated area*
Socony-Vacuum Oil Company, Incorporated.	Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York.
The Atlantic Refining Company.	Pennsylvania and Delaware.
Standard Oil Company of New Jersey.	New Jersey, Maryland, Virginia, West Virginia, North Carolina, South Carolina, and the District of Columbia.

Selected Company:	States in designated area:
The Standard Oil Company (Ohio).	Ohio.
The Standard Oil Company (Kentucky).	Kentucky, Mississippi, Alabama, Georgia, and Florida.
Standard Oil Company (Indiana)	Indiana, Illinois, Michigan, Wisconsin, Missouri, Iowa, Minnesota, Kansas, Nebraska, South Dakota and North Dakota.
Standard Oil Company of Louisiana.	Louisiana, Arkansas, and Tennessee.
Humble Oil & Refining Company	Texas.
Continental Oil Company	Oklahoma, New Mexico, Colorado, Utah, Wyoming, Idaho, and Montana.
Standard Oil Company of California.	California, Washington, Oregon, Nevada, and Arizona.

Defendants follow the prices so posted by the selected defendant in quoting, posting and publishing prices for pe- [fol. 160] troleum products and in selling and contracting to sell petroleum products in each of such areas.

51. Defendant Ethyl Gasoline Corporation is the sole manufacturer and distributor of tetra-ethyl lead fluid, a patented fluid, which removes the knocking characteristic of gasoline when mixed as a blending agent. Approximately seventy-five per cent of all motor fuel consumed in the United States contains tetra-ethyl lead fluid and all defendant majors, with the exception of Sun Oil Company, use it as a blending agent. Defendants, individually and collectively, agree with defendant Ethyl Gasoline Corporation to use this fluid on the basis of an agreed system of licenses which are granted by the Ethyl Gasoline Corporation in restrictive licensing contracts, which require uniform methods of blending tetra-ethyl lead fluid with gasoline. Defendants and Ethyl Gasoline Corporation also agree that the latter prohibit the blending, use or marketing of tetra-ethyl lead fluid by non-defendants, except with the approval of, and under terms and conditions dictated by and agreeable to defendants. Defendants do not approve applications of independent refiners who sell gasoline at prices below those fixed and maintained by the defendants.

52. Defendants concertedly fix and maintain the prices at which they require their jobbers, distributors and service station operators, purchasing petroleum products in interstate commerce for resale, to sell such products, and the difference between such agreed upon prices and those at which defendants sell their petroleum products are the mar-

gins allowed to such resellers. Defendants have adopted [fol. 161] uniform margin provisions as part of the uniform contracts used in selling petroleum products to distributors and through commission agents. These margins are progressively narrowing and at times are fixed and maintained at such low levels that jobbers, distributors, commission agents and service station operators are either barely able to meet their costs of operation and distribution or are compelled to sell at a loss. These uniform narrow margins prevent jobbers, distributors, commission agents, and service station operators, who purchase defendants' petroleum products and sell them to resellers and the consuming public, from competing with the defendants and with each other at prices lower than those fixed by defendants.

53. Defendants have agreed to make and are making periodic inspections and surveys of gasoline prices posted and charged by jobbers, distributors and trackside and other service station operators, for the purpose of ascertaining the identity of those who are selling at prices less than those posted and charged by the defendants. The information so obtained is transmitted to the suppliers of the price-cutting sellers who coerce and compel those sellers to sell at the prices fixed by the defendants by theatening to cut off and cutting off their supply of gasoline.

54. Defendants concertedly designate selected defendants in various localities throughout the United States to supply service stations with petroleum products for resale at prices below those fixed and maintained by defendants and below those at which independents sell, thereby eliminating independent competitors from business and "stabilizing" local [fol. 162] price situations without lowering fixed and maintained tank wagon prices. Some of these suppliers and service stations are operated under the guise of independent ownership when in truth and in fact they are owned, controlled or operated by designated defendant companies, individually or jointly. These stations are supplied with petroleum products at a loss to defendants.

55. Defendants are eliminating independent trackside service stations, which are enabled to sell below the prices fixed and maintained by the defendants through savings from direct distribution to the consumer, from business by

concertedly forcing railroad companies to refuse new leases and cancel old leases for, and raise rentals on, sites on which trackside service stations are located.

56. Defendants sell petroleum products to so-called commercial consumers, such as transportation companies, industrial establishments, public utilities and others using large quantities of gasoline, fuel oils and lubricants, at fixed prices which are lower than those fixed and maintained by them in sales of identical petroleum products, in similar quantities, to jobbers, distributors, service station operators and the consuming public generally. This practice prevents independent refiners, jobbers, distributors, and service station operators from selling to commercial consumers and enables defendants to monopolize this trade and commerce in petroleum products.

57. When requested to bid on public or private contracts for petroleum products, defendants fix the prices to be submitted as bids and select the defendant who is to be the low bidder. By means of this collusive action defendants [fol. 163] refrain from bidding against each other except in a perfunctory manner and without good faith, submit agreed upon uniform prices in lieu of competitive bids, prevent independent refiners, jobbers and distributors from successfully competing with defendants and monopolize the sale of petroleum products to large public and private consumers.

Combinations

58. The twenty-two integrated major companies are engaged in the production, refining, transportation, and marketing of petroleum and its products, while a large number of non-integrated or independent companies engage in one or more but not all of those branches of the industry. Each of the integrated companies is a large combination of capital and individuals possessing great economic power, including the power to handicap or even stifle effective competition by the nonintegrated companies. Moreover, all of these integrated companies operate in effect as one unit under substantially identical business policies and practices. Through the control of oil reserves, wells, transportation and marketing facilities, the twenty-two companies have been able to restrict the production of independent producers, exclude independents from the use of transpor-

tation and marketing facilities and fix the price of petroleum and its products. In an attempt to prevent such restraints, the government has successfully prosecuted numerous actions against the majors. However, such piecemeal prosecutions have not resulted in the restoration of free competition or prevented the recurrence of such arrangements, [fol. 164] because the power inherent in the combinations continued to exist.

VI

Purpose and effect

59. Defendants have adopted and engaged in each of the means, methods, devices, practices and activities aforesaid with the purpose, intent and actual effect of unlawfully restraining, monopolizing, attempting to monopolize, controlling and otherwise unlawfully restricting the aforesaid trade and commerce in petroleum and its products.

60. Defendants, by concerted action, through the Institute, and independently of it, have actively and effectively restricted their own activities and dominated and restricted the activities and business policies of all others engaged in producing, transporting, refining and marketing petroleum and its products, particularly those activities and policies connected with and relating to the production, transportation, marketing and utilization of crude oil, the methods of transporting and marketing petroleum products and the price structures of crude oil and petroleum products throughout the industry.

61. Defendants by concertedly engaging in the unlawful activities herein described have monopolized the known crude oil reserves; have limited the amounts of crude oil produced by themselves and others for the purpose of reducing the amount available for the manufacture of petroleum products; have obtained control of practically all of the crude oil produced; have maintained the prices paid [fol. 165] to independent producers of crude oil at a low level in all fields except in those where defendants maintained high prices to eliminate independent competitors who had to rely upon purchases in those fields; have restrained the interstate transportation of crude oil; have limited the amounts of petroleum products manufactured by themselves and others; have obtained control of a substantial portion of the petroleum products produced by

independent refiners; have monopolized the sale of petroleum products; have precluded independents from competing successfully with them by increasing the independents' cost of transporting petroleum products to market while decreasing their own and by obtaining control of virtually all of the facilities of distribution from refinery to consumer and preventing the operators of these facilities from handling products of independents; have restrained the interstate transportation of petroleum products; and have fixed and maintained high and arbitrary prices for the sale of their petroleum products and have driven out of business independents who attempted to sell below such prices.

62. The consumer has been deprived through the operation of the present structure of the oil industry of the natural advantages of geographical position. The present combination has caused high rates to be charged for the use of pipelines from oil wells to independent refineries and for the use of pipelines or railway haulage from independent refineries to markets. On the other hand the combination has caused the railroads to maintain low rates on the transportation of petroleum products from the refineries and terminals of the integrated companies to consuming [fol. 166] areas and has received rebates from pipelines. This has contributed to the maintenance of a fixed price through the reduction of competition; it has also denied to consumers the advantages of natural geographic position, and has resulted in the uneconomic and artificial allocation of the costs of transportation so far as the consumer is concerned.

63. The consumer has been deprived through the operation of the present structure of the oil industry of the ability to buy petroleum products from numerous competitors. The setting of a price, high or low, suitable to the integrated companies, the control of transportation, and the exchange of gasoline between the integrated companies, thus eliminating the cost of transportation while deceiving the public, has eliminated most of the competition and products of independent refineries. The control of bulk plants obtained through exclusive dealing contracts and by threats of ruinous competition, promises of guaranteed margins and excessive loans, and the control of distributors including service stations has eliminated most of the products

of independent refiners from the market and has also made it impossible for the consumer to buy at the service station products other than those of the controlling integrated company.

64. The consumer has been deprived through the operation of the present structure of the oil industry of the benefits of technological improvements which should be reflected in lower costs to producers and refiners and lower prices to consumers. The maintenance of fixed prices and artificial transportation rates has restricted or eliminated competition which would force the integrated companies [fol. 167] to give to the consumer the benefits of lower costs arising from technological improvements. The price to the consumer does not reflect the lower costs and the greater recovery of gasoline through modern refining methods, and the increased value of by-products. Adoption of artificial transportation rates has also withheld from the consumer the benefits of the development of new types of transportation facilities, such as pipelines, trucks and barges, because of their use in the price formula which does not take into account either the origin of the product or the transportation facility actually used.

65. The operation of the present structure of the oil industry has fostered and preserved an uneconomic, duplicative and wasteful marketing system. The cost of transporting and marketing the refined product under the present system is greater than the cost of production. This uneconomic system has been preserved through the denial of pipelines to independent refiners and through the capture of marketing outlets by the integrated companies. The present marketing system is wasteful in that it operates through service stations which cannot sell more than one line of products because of agreements in sales contracts and the use of the cancellation clauses in the leases of service stations.

66. The power possessed by the integrated companies has deprived a substantial number of citizens of their justly due profit through the operation of the so-called "Iowa Plan". This plan, previously described, places the burden of competition in the sale of gasoline on the service station operator, who, in order to preserve his lease, is forced to forego the margin allowed for his profit. The advantages

[fol. 168] that the consumer obtains through lower prices are thus placed at the expense of the service station operator, whose facilities are not used economically because of forced full line policies.

67. The operation of the present structure of the oil industry has resulted in the production of crude oil, necessary for the safety of the nation, not on true conservation principles, but on the principle of price maintenance.

68. Each of the four branches of the industry is dominated and controlled by the 22 defendant majors who transact more than eighty-five per cent of the total business of the industry. In all the four branches of the industry, where normal competition once flourished, the rapid development of the completely integrated defendants has substantially destroyed competition. The possession and use of facilities and supplies provided by integration enables defendants to render ineffective and stifle existing and potential competition which defendants have combined and conspired to eliminate through the aforesaid means, methods, devices, practices and activities and their control of crude oil production, their refusal to operate pipelines as common carriers, their acquisitions of bulk plants and service stations and the successful forcing of railroads to maintain preferential freight rates. Defendant majors operate their integrated organizations in all branches of the industry as a single unit and the profits of one branch are used to subsidize operations in branches in which competition exists, thus enabling the defendants to enjoy unfair competitive advantages over independent competitors. Operating on an integrated basis, the defendants have [fol. 169] purposely neglected and failed to compute investments in, incomes from, and costs of operations of, each of the various branches in order to conceal the results and effects of their illegal purposes and practices.

69. Unless enjoined by this Court the defendants will continue to violate the Acts of Congress in the manner heretofore alleged.

VII

Prayer

Wherefore, plaintiff prays:

(1) That summons issue directed to each defendant, including those residing or having offices outside of the Dis-

trict of Columbia, commanding each defendant to appear herein and answer the allegations contained in this complaint and to abide by and perform such acts and decrees as the Court may make in the premises;

(2) That the defendant Institute be forthwith dissolved;

(3) That the provisions of the contracts of sale of petroleum products, of agency and lease with jobbers, distributors, commission agents, service station operators and commercial consumers which provide for exclusive dealings with defendants, be adjudged and decreed to be monopolistic devices and also in violation of Section 3 of the Clayton Act and be cancelled forthwith, and that the defendants herein and each of them and their respective successors be permanently enjoined from executing or entering into any contracts or leases containing similar provisions, and from concertedly adopting contracts, for the sale of petroleum products, having uniform provisions agreed upon by the defendants;

[fol. 170] (4) That the defendant majors and secondaries and each of them be permanently enjoined and restrained from dominating or controlling or attempting to dominate or control, directly or indirectly, buying, selling, pricing and operating policies of the operators of facilities used in the marketing of petroleum products by the means herein described or by any other means whatsoever;

(5) That the discriminatory price provisions of the contracts entered into by defendants with, and the sale of products by defendants at discriminatory prices to, competing service station operators, be adjudged and decreed to be monopolistic devices and also in violation of Section 2 of the Clayton Act and that such provisions be cancelled forthwith, and that the defendants herein and each of them be permanently enjoined from entering into future contracts for the sale of, and from selling in the future, any petroleum products to competing service station operators under similar discriminatory provisions and prices;

(6) That the defendants and each of them and each and all of their representatives, officers, directors, agents, servants and employees be permanently enjoined and restrained from directly or indirectly entering into or carrying out any contract, combination or conspiracy to fix, raise, lower,

stabilize or peg prices at which the defendants purchase petroleum products, sell their petroleum products or require that others shall resell such petroleum products in the manner and by the means herein alleged or in other manner or means;

[fol. 17[illegible]] (7) That the defendants and each of them and each and all of their representatives, officers, directors, agents, servants and employees be permanently enjoined and restrained from directly or indirectly entering into or carrying out any contract, combination or conspiracy to maintain prices, margins and price differentials, concertedly fixed by defendants, in the manner herein described or in any other manner;

(8) That the defendant majors and secondaries and each of them be permanently enjoined and restrained from operating common carrier crude oil gathering pipelines as private carriers to monopolize gathering pipeline transportation of crude oil in violation of the Sherman Anti-trust Act;

(9) That the defendants and each of them and each and all of their representatives, officers, directors, agents, servants and employees be permanently enjoined and restrained from directly or indirectly combining or conspiring to eliminate actual or potential competitors by coercing, inducing and agreeing with railroad companies to establish and maintain rail freight rates which are disadvantageous to competitors, by inducing and coercing railroad companies to eliminate track-side service stations, and by using bogus independents as price cutters to eliminate those competitors who are selling below the prices fixed and maintained by the defendants, and by engaging in any other activities which are designed to or have the effect of impairing the ability of such competitors to compete with defendants.

(10) That the defendants and the officers, directors, members, representatives, agents and employees of the defend-[fol. 172] ant Institute be permanently enjoined and restrained from promoting, furthering, and maintaining, directly or indirectly, any combination, conspiracy and monopoly herein described, from organizing and maintaining in concert with the corporate defendants and their officers, agents or employees any organizations or committees thereof to supervise, enforce or make effective those

illegal policies, programs, and practices adopted and agreed upon by the defendants as herein described, or any similar policies, programs and practices;

(11) That the combinations and conspiracies to restrain and monopolize the trade and commerce among the several states of the United States, with foreign nations and within the District of Columbia, together with the attempts to monopolize and the monopolization of said trade and commerce and contracts in restraint thereof, hereinbefore described, be declared illegal and in violation of the Sherman Antitrust Act;

(12) That the defendants and each of them and each and all of their representatives, officers, directors, agents, servants and employees, and all persons acting or claiming to act on behalf of the defendants, or any of them, be permanently enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the contracts, combinations and conspiracies to restrain and monopolize, the attempts to monopolize and the monopolization of said trade and commerce in petroleum and its products, and from entering into and carrying out any contracts, restraints, attempts to monopolize and monopolies similar to those herein described;

[fol. 173] (13) That the defendants and each of them be permanently enjoined and restrained from directly or indirectly acquiring, pursuant to any agreement, arrangement or understanding, any part of the crude oil reserves of the United States when the purpose or effect of such acquisition is to restrain or monopolize any part of the above described interstate or foreign trade or commerce;

(14) That the defendant majors, their subsidiaries and affiliates, and each of them be permanently enjoined and restrained from concertedly engaging, with any other defendant major or its subsidiaries and affiliates or with any other person, firm or corporation in the petroleum industry, in any activities which are designed to or have the effect of reducing and restricting the amounts of crude oil produced or the amounts of petroleum products manufactured by defendants or others;

(15) That the defendants and each of them and each and all of their representatives, officers, directors, agents, serv-

ants and employees be permanently enjoined and restrained from directly or indirectly entering into or carrying out any contract, combination or conspiracy to fix, raise, lower, stabilize or maintain prices for the purchase or sale of crude oil in the manner herein alleged or in any other manner;

(16) That the plaintiff have such other and further relief with respect to the organization, functioning and operation of the defendants as the Court may deem proper; and

[fol. 174] (17) That the plaintiff recover its costs herein.

United States of America, Edward M. Curran, United States Attorney for the District of Columbia. Robert H. Jackson, Attorney General. Thurman Arnold, Assistant Attorney General. Mac Asbill, Special Assistant to the Attorney General. W. B. Watson Snyder, Special Assistant to the Attorney General. H. Douglas Weaver, Special Attorney.

[fol. 175] AFFIDAVIT "B"

UNITED STATES OF AMERICA,
State of California,
County of Los Angeles, ss:

JOHN M. HALL, being first duly sworn, deposes and says:

That he is a member of the bar of this Honorable Court and one of the attorneys of record for defendants herein;

That the charges of the complaint herein involve alleged operations of defendants during past years within the States of California, Oregon, Washington, Arizona, Nevada, New Mexico, Idaho and Utah in the sales of gasoline and other products;

That all of defendants' operations in connection with such sales were under the ultimate direction of defendants' employees whose offices are and have been permanently located at the headquarters offices of defendants in the Standard Oil Building at 225 Bush Street in the City and County of San Francisco, California, and at other locations in said City and County of San Francisco, all within the Northern District of California; that such permanent rec-

ords as exist of such alleged operations are presently and for years past have been located at such headquarters offices, where many of them are being constantly used or consulted in connection with defendants' day to day operations;

That from investigation conducted by affiant since the time of the filing of the complaint herein it appears that the witnesses and the papers and records to which resort must be had by defendants upon any trial of this cause are all permanently located at such headquarters offices, and that there is a substantial number of said witnesses and that said papers and records are voluminous;

That affiant is informed and verily believes and upon that ground avers that defendants' business operations re- [fol: 176] quire the presence of said witnesses and said papers and records at said headquarters offices, and that a removal of the same therefrom to the Southern District of California would impose a substantial burden and hardship upon defendants and an embarrassment to their operations at said headquarters offices and a substantial expense to defendants in defraying transportation costs and necessary hotel expenses for said witnesses, and would also subject said witnesses and others whose presence might be required in connection with this litigation to great personal inconvenience as a result of being required to travel from the City and County of San Francisco to the City of Los Angeles and sojourn at the City of Los Angeles for extended periods, all of which would be avoided if this action were prosecuted in said Northern District;

That at San Francisco, California, within said Northern District where said headquarters offices are located there is a United States District Court available to plaintiff as well as a United States attorney and his staff, as well as an office of the Anti-Trust Division of the Department of Justice of the United States;

That a further burden and hardship will be imposed upon defendants and their counsel in connection with the preparation for a trial of this cause, if the same be tried in this Court instead of in said Northern District, in that it will be necessary in connection with such preparation for said counsel to consult with prospective witnesses and others whose duties necessarily require their continued presence at said headquarters offices in order that the business of defendants may be carried on, and to examine papers and

records at said headquarters offices, both in connection with such consultation and otherwise, all of which will impose additional substantial expense upon defendants, which [fol. 177] would be avoided if this action were prosecuted in said Northern District.

Wherefore, affiant prays that this cause be dismissed upon the principle of forum non conveniens.

(Signed) John M. Hall.

Subscribed and sworn to before me this 2nd day of April, 1947. (Signed) Harriet S. Elder, Notary Public in and for the County of Los Angeles, State of California. My commission expires June 16, 1949.

[fol. 178] AFFIDAVIT "C"

UNITED STATES OF AMERICA,
State of California,
City and County of San Francisco, ss:

G. M. FOSTER, being first duly sworn, deposes and says:

That he is now and for many years last past has been an assistant secretary of defendant, Standard Oil Company of California, and has personal knowledge of the facts herein averred;

That in years past said defendant has used forms of contracts and subleases in its dealings with dealers; that the content of the forms of said contracts and subleases, which have frequently been printed forms, has varied from time to time; that this has been true with respect to so-called "Dealer Agreements," "Dealer Agreements TBA," "Distributor Agreements," "Petroleum Products and Equipment Agreements" and "Subleases";

That affiant has read the complaint herein, but is unable to determine therefrom which of the forms heretofore used by said defendant were before the pleader or are attempted to be described in paragraphs 28 to 31 inclusive therein or are charged to be in violation of the anti-trust Acts.

(Signed) G. M. Foster.

Subscribed and sworn to before me this 26th day of March, 1947. (Signed) Chalmer Munday, Notary Public in and for the City and County of San Francisco, State of California.

[fol. 180] *Supporting Motion No. 1* (for a stay of proceedings).

(1) This Court should stay further proceedings herein until a termination of proceedings in the earlier action filed in the United States District Court for the District of Columbia by plaintiff herein against the defendants herein and others.

Cresta Blanca Wine Co. v. Eastern Wine Corp., 143 Fed. (2d) 1012, 1014 (C.C.A. 2, 1944)
Green v. Gravatt, 35 F. Supp. 491, 492, 493 (Pa. 1940)
United States v. Anaconda Wire & Cable Co., 52 F. Supp. 824, 826 (Pa. 1943)
Crosley Corp. v. Hazeltine Corp., 122 Fed. (2d) 925, 929 (C.C.A. 3, 1941; cert. den. 315 U.S. 813)
Lockhart v. Mercer Tube & Mfg. Co., 53 F. Supp. 301, 305 (Del. 1943)
Schwartz v. Kaufman, 46 F. Supp. 318, 319 (N.Y. 1940)
Gulf Oil Corp. v. Gilbert, —— U.S. ——; —— L. ed. —— (March 10, 1947)

(2) A motion to stay proceedings is not governed by Rule 12(b) F.R.C.P.

Green v. Gravatt, 35 F. Supp. 491, 493 (Pa. 1940)

[fol. 181] *Supporting Motion No. 2* (to dismiss).

This is a proper case for the application of the principle of forum non conveniens.

Gulf Oil Corp. v. Gilbert, —— U.S. ——, No. 93—October Term, 1946, decided March 10, 1947.

[fol. 182] *Supporting Motion No. 3* (to dismiss).

(1) A motion to dismiss does not admit legal conclusions.

"It is familiar learning that allegations as to matters of law are not admitted on a motion to dismiss." [citing authorities]

Green v. Brophy, 110 Fed. (2d) 539, 544 (C.A. D.C. 1940)

> "The motion to dismiss conceded the truth of all well-pleaded facts, but did not concede the truth or accuracy of the legal conclusions pleaded."
>
> *Federal Life Ins. Co. v. Ettman*, 120 Fed. (2d) 837, 839 (C.C.A. 8, 1941)

> "A motion to dismiss . . . does not admit arguments, inferences or legal conclusions." [Per District Judge J. F. T. O'Connor granting motion to dismiss.]
>
> *Flanigan v. Security-First Nat. Bank*, 41 F. Supp. 77; 79 (S.D. Calif. 1941)

(2) The "Offenses Charged" alleged in par. 27 are that defendants have violated the anti-trust Acts by executing and entering into certain contracts and agreements with service station and garage operators in the states of California, Oregon, Washington, Arizona, Nevada, New Mexico, Idaho and Utah. Then follows the allegation: ". . . *which said written contracts and oral agreements are in unreasonable restraint of, and substantially lessen competition in, the herein described interstate trade and commerce in petroleum products and automotive accessories.*" Later on, in par. 34, it is alleged that these contracts had the effect of eliminating competition for the patronage of a "*substantial portion*" of the retail outlets, and depriving a "*sub-*
[fol. 183] *stantial portion*" of the retail outlets of the opportunity of purchasing such products, and "*securing to defendants . . . a monopoly*" of the patronage in a "*substantial portion*" of the retail outlets for such products, "*and have had the effect thereby of restraining and substantially lessening competition in the interstate trade and commerce in petroleum products and automotive accessories hereinabove described.*"

The above passages which are underscored are legal conclusions, and accordingly must be disregarded.

In *Newport News Co. v. Schauffler*, 303 U.S. 54, 57 (1938), the Court, affirming a decree affirming the dismissal of a complaint said:

> "*First.* The Company insists that since the case was heard on motion to dismiss the bill which alleges that the Company is not engaged in interstate or foreign commerce and its relations to its employees do not affect such commerce, these allegations must be accepted as true. The motion admits as facts allegations describ-

ing the manner in which the business is carried on, but not legal conclusions from those facts. *The allegations that interstate or foreign commerce is not involved are conclusions of law.*"

In *United States v. Griffith Amusement Co.*, 1 F.R.D. 229, 231 (Okla. 1940), with reference to a complaint under secs. 1 and 2 of the Sherman Act, the Court said:

"A conspiracy or combination cannot be alleged merely *in the terms of the statute.*"

As said in *United States v. French Bauer, Inc.*, 48 F. Supp. 260 (Ohio, 1942; appeal by United States dismissed on its motion 318 U.S. 795) quashing an indictment:

[fol. 184] ". . . it is necessary in an indictment or in a civil pleading seeking relief under the Sherman Act that not merely conclusions but *factual allegations* be made which are sufficient to show direct and substantial impact upon interstate commerce."

(3) The complaint fails to allege *facts* (as distinguished from these legal conclusions) showing:

(A) That there was any contract, combination or conspiracy in restraint of *interstate commerce* (sec. 1 of Sherman Act).

(B) That there was any restraint of interstate commerce which was *unreasonable*. (sec. 1 of Sherman Act)

(C) That there was any lessening of competition *in interstate commerce*. (sec. 3 of Clayton Act)

(D) That there was any lessening of competition which was *substantial*. (sec. 3 of Clayton Act)

(E) That there was any tendency to create a monopoly in *interstate commerce*. (sec. 3 of Clayton Act)

(F) That the agreements and contracts referred to were made "*in the course of*" *interstate commerce*. (sec. 3 of Clayton Act)

As said in *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 500 (1940):

"In the cases considered by this Court since the Standard Oil case in 1911 some form of restraint of

commercial competition has been the *sine qua non* to the condemnation of contracts, combinations or conspiracies under the Sherman Act, and in general restraints upon competition have been condemned only when their purpose or effect was to raise or fix the [fol. 185] market price. It is in this sense that it is said that *the restraints, actual or intended, prohibited by the Sherman Act are only those which are so substantial as to affect market prices. Restraints on competition or on the course of trade in the merchandising of articles moving in interstate commerce is not enough, unless the restraint is shown to have or is intended to have an effect upon prices in the market or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition.*"

In *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U.S. 346, 356 (1922) and in *Corn Products Co. v. Comm'n.*, 324 U.S. 726, 738 (1945) it was pointed out that sec. 3 of the Clayton Act was "not intended to reach every remote lessening of competition" or to prohibit the mere "possibility" of the consequences referred to, i. e. that the lessening of competition must be "*substantial.*"

[fol. 186] *Supporting Motion No. 4* (to strike from complaint).

(1) Under Rule 12(f) F.R.C.P. redundant, immaterial, or impertinent matter may be stricken from a pleading.

Minnesota M. & M. Co. v. Carborundum Co., 1 F.R.D. 5, 7 (Del. 1943)

(2) Par. 33 of the complaint, sought to be stricken, alleges "means and methods" which are said to have induced the making of the contracts and agreements declared to be in violation of the Sherman and Clayton Acts. If these contracts and agreements violated these Acts, the means and methods by which they were induced are immaterial and redundant. If they did not violate these Acts, then the means and methods by which they were induced are likewise immaterial and redundant, for they could not make unlawful that which was lawful under the Acts.

(3) Obviously par. 33 would raise innumerable collateral issues. Since these issues are immaterial, defendants should

not be required to assume the very considerable burden which would be imposed by preparing to meet them.

(4) The words "*and other relationships*" in par. 26 are too general and indefinite to require an answer.

United States v. General Motors Corp., 5 Fed. Rules Serv. 12e.2-1, Case 13 (Ill. 1942).

[fol. 187] *Supporting Motion No. 5* (for a more definite statement, or bill of particulars).

(1) The province of this motion in a case arising under the anti-trust Acts is well stated in *Loce v. Consolidated Edison Co.*, 1 F.R.D. 559, 562 (N.Y. 1940), as follows:

> "Under Rule 12(e), F.R.C.P., it is provided that a bill of particulars becomes a part of the pleading which it supplements. Accordingly, the particulars 'to enable a party to prepare a responsive pleading or to prepare for trial', are determined with that provision in mind. A contrary view would violate that purpose of the Rules which seeks to obtain short and concise statements of the facts upon which the pleader relies. This does not mean, however, that defendants will be forced to answer general allegations and conclusions, rather than facts, or that the courts will treat the pleadings in all types of actions in the same manner. In cases founded upon the Anti-Trust Act which are dependent for final relief upon the conformation of numerous facts to such flexible concepts as monopoly, interstate commerce, restraint of trade, etc., which are of serious and immediate concern to commercial enterprise, I think that the court should require from plaintiffs in their pleading a statement of facts sufficiently complete to mitigate the dangers that might result if these cases proceeded upon the shaky foundation of a vague and somewhat indefinite complaint. United States v. Griffith Amusement Co., D.C., 1 F.R.D. 229. I am, therefore, inclined to consider liberally defendants' requests for particu-
> [fol. 188] lars of plaintiff's claim. . ."

The foregoing is quoted with approval in *Twin Ports Oil Co. v. Pure Oil Co.*, 46 F. Supp. 149, 154 (Minn. 1942).

(2) Where the allegations of the complaint, although legally sufficient, are so general and indefinite "that it would

be difficult for each of the defendants to prepare a responsive pleading that would adequately meet not only the charges of the complaint but also the requirements of Rule 8," the plaintiff will be required to furnish the particulars demanded.

Camrel Co., Inc. v. Skouras Theatres Corp., 8 Fed. Rules Serv. 8a.25, Case No. 4 (N.J. 1944)

[fol. 189] *Supporting Motion No. 6* (for inspection)

(1) Motion under Rule 34 F.R.C.P. may be made at any time after the commencement of the action and prior to answer.

Courteau v. Interlake S. S. Co., 1 F.R.D. 525, 526 (Mich. 1941)

C. F. Simonin's Sons Inc. v. American Can Co., 24 F. Supp. 765 (Pa. 1938)

"Thus, either party may make a motion under Rule 34, giving due notice to all other parties, at *any time after jurisdiction has been obtained over the defendant* or over property which is the subject of the action."

2 *Moore's Federal Practice*, p. 2637.

(2) There can be no question that the documents sought to be produced "constitute or contain evidence material to" the "matter involved" in this action, since these are the documents which are the basis for the "Offenses Charged."

Pars. 27 to 31 of the complaint.

(3) Since the charges of the complaint are founded upon these documents and the complaint purports to allege their legal effect (par. 31) and purports to allege (by way of conclusion) certain of their provisions, it may fairly be assumed that plaintiff has copies or forms of these documents in its possession.

(4) As shown by Affidavit "C" the content of the forms of documents of this general character heretofore used by defendant Standard Oil Company of California has varied from time to time.

(5) Defendants are entitled to be specifically informed with respect to the charges against which they are required

to defend. Therefore, defendants are entitled to inspect and copy the *particular* forms of contract and sublease which are relied upon by plaintiff to support its charges [fol. 190] that the anti-trust Acts were violated.

(Italics throughout this memorandum of Points and Authorities have been added.)

[fol. 191] IN THE DISTRICT COURT OF THE UNITED STATES

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

[Title omitted]

No. 6159-B

Civil

(Nature of Pleading)

NOTICE OF HEARING OF MOTIONS FOR A STAY OF PROCEEDINGS, (AND IN THE ALTERNATIVE) TO DISMISS, (AND IN THE ALTERNATIVE) TO STRIKE FROM COMPLAINT, FOR A MORE DEFENITE STATEMENT OR BILL OF PARTICULARS, AND FOR INSPECTION, TOGETHER WITH SAID MOTIONS, AND AFFIDAVITS AND POINTS AND AUTHORITIES SUPPORTING THE SAME

Received copy of the within Notice this 3rd day of April, 1947.

W. Alan Thody, Special Assistant to the Attorney General; William C. Dixon, Special Assistant to the Attorney General. By J. M. McGrath. Attorneys for Plaintiff.

[fol. 192] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

APPEARANCES:

For the Plaintiff: Tom C. Clark, Attorney General; Wendell Berge, Assistant Attorney General; Holmes Bald-

ridge, Special Assistant to the Attorney General, all of Washington D. C. Richard B. O'Donnell, Special Assistant to the Attorney General; William C. Dixon, Special Assistant to the Attorney General; W. Alan Thody, Special Assistant to the Attorney General; James M. Carter, United State Attorney, all of Los Angeles, California.

For the Defendants: Lawler, Felix & Hall, By John M. Hall, Los Angeles, California.

DECISION ON MOTIONS OF THE DEFENDANTS—Filed July 14, 1947

[fol. 193] YANKWICH, District Judge:—

In this action brought by the United States to enjoin certain practices of the defendant corporations, which the Complaint alleges to be in violation of the Sherman (15 U.S.C.A., Sec. 4) and the Clayton (15 U.S.C.A., Sec. 25) Anti-Trust Acts, several motions have been interposed by the defendants.

The Complaint, generally, charges certain practices in controlling 8000 stations in eight Western States,—California, Oregon, Washington, Arizona, Nevada, New Mexico, Idaho, Utah,—and in controlling oil, gasoline, tires, and other products to be sold at these stations to the exclusion of competitors in the same fields.

The motions, heretofore argued and submitted, are now decided as follows:

MOTION No. I

(For a Stay of Proceedings)

This motion seeks to stay proceedings in this cause until the final termination or determination of an anti-trust action instituted by the United States, in the District of Columbia, against the American Petroleum Institute and many other defendants, including the defendant here. The action just mentioned was filed on September 30, 1940. We have had no indication as to its status, whether issue has been joined, whether any attempt has been made to set it for trial; and, if so, when it will be tried.

[fol. 194] A comparison of the Complaint in the case before us with the Complaint in the case just referred to, shows that while both of them charge violations of the Sherman Anti-Trust Act (15 U.S.C.A., Sec. 4) and the

Clayton Act (15 U.S.C.A., Sec. 25) the issues are netirely different. The present action is against two defendants. The action in the District of Columbia is directed at practically the entire oil industry. It is true that some of the practices charged in this Complaint as violations of the anti-trust laws, are also charged in the other Complaint. But there, they are incidental to other charges directed at other companies. Here, the control of gasoline stations through the so-called "Iowa Plan" of leasing and like practices, are of the very essence of the charge, and are directed specifically at the two companies.

The Complaint in this case is strictly regional. It seeks judicial condemnation of certain practices in eight western states. The Complaint in the other case is of a national scope. The dissimilarity between the two actions, the present one which seeks to condemn only certain practices relating to the marketing of products through stations in a limited number of states, and the other, which attacks many practices indulged in by practically the entire oil industry, is so great as to forbid a stay of the present action pending the determination of the broader issues involved in the action pending in the District of Columbia.

The Motion is, therefore, denied.

[fol. 195] MOTION No. II

(To Dismiss)

While the motion was not pressed, it is apparent to me that the grounds alleged for dismissal, namely, the present location of witnesses and documents at the defendant's headquarters in the City and County of San Francisco, are insufficient to call for the application of the doctrine of *forum non-conveniens*, even if we assume that the principle applies to an action of this character, in which the statute permits the action to be brought not only in the "district whereof it is an inhabitant, but also in any district wherein it may be found to transact business". (15 U.S.C.A., Sec. 22) (And see, Eastman Co. v. Southern Photo Co., 1925, 273 U.S. 359; Baltimore & Ohio Ry. Co. v. Kepner, 1941, 314 U.S. 44; Miles v. Illinois Central, 1942, 315 U.S. 698. The teaching of the last two cases that the principle of *forum non-conveniens* does not apply to cases *where special venue is fixed by a statute* is approved in Gulf Oil Co. v. Gilbert, No. 93, October Term, decided on March 10, 1947 (See p. 4.

of Official slip decision), on which this motion is chiefly grounded)

The Complaint here alleges that the defendants transact business in this district.

The Motion, is therefore, denied.

[fol. 196] Motion No. III

(To Dismiss for Failure to State a Claim and for Lack of Jurisdiction)

The time which has elapsed since the presentation of these motions has permitted me to make a more detailed study of the complaint in this case than I had occasion to do before their presentation, and when they were being argued.

Such study leads me to the conclusion that the Complaint states a claim and states with sufficient certainty violation of both the Sherman and the Clayton Acts. It is to be borne in mind that this is a civil action. And while it is of a serious nature, it still conforms to the pattern which the Federal Rules of Civil Procedure put into effect and under which pleadings are, in effect, notice pleadings. This, of course, does not mean that a complaint cannot be dismissed for insufficiency of allegations. It does mean however, that if a complaint states a claim in the manner required by Rule 8, it is good against a motion to dismiss. Whether a complaint satisfies this requirement is a question to be determined, in each case, by reference to its allegations.

In the complaint before us, we have a detailed description of the business of the defendants and of the relations between the two. The trade terms to be referred to are defined. The nature of the interstate commerce is described in great detail. The restraint through various forms of agreements, the aim of which is to monopolize certain stations as outlets for petroleum and other products in interstate commerce to the exclusion of competitors are described [fol. 197] in great detail. So also is the effect of these agreements on interstate commerce.

These allegations satisfy the requirements of the statutes under which the action is brought and of accepted rules of pleading. They are of the type which the courts have held sufficient even in a criminal indictment. (See United States v. General Motors Corporation, 1941, 7 Cir., 121 F(2) 376; and see my opinion in United States v. Heating, Piping and

Air Conditioning Contracts, etc. Association, 1940, D C Cal., 33 Fed Sup 978).

In fact, if we gauge this complaint by the standards sanctioned by our Ninth Circuit Court of Appeals for actions brought by private parties to recover damages resulting from violations of the anti-trust acts,—*in which greater certainty is required in the allegations*,—the complaint meets them. (See, Hicks v. Bekins Moving & Storage Co., 1939, 9 Cir., 97 F(2) 583; Lynch v. Magnavox Company, et al, 1938, 9 Cir., 94 F(2) 883; and see, Louisiana Farmers' Protective Unions; Inc., 1942, 8 Cir., 131 F(2) 419, 422-423, where the Court, in referring to the difficulties of pleading in anti-trust cases, uses this very language highly pertinent to this case:

> "To sustain the court below the appellees contend that the appellant has pleaded merely conclusions of law, setting forth in the words of the statute, a conspiracy among the appellees to establish a monopoly in interstate trade in strawberries, and that the complaint is barren of allegations concerning the acts of appellees [fol. 198] constituting the alleged violations of law. It is conceded that more than this is required of the pleader in a civil action under the statute in question, but the complaint here is not so deficient in its allegations of ultimate facts as to justify its dismissal without leave to amend. *The courts have always recognized the difficulty in actions of the character here, inherent in the nature of the case, in setting forth in precise detail the acts constituting the* alleged violations of the anti-trust laws. Loewe v. Lawlor, 208 U. S. 274, 28 S. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815; Swift & Co. v. United States, 196 U. S. 375, 395, 396; 25 S. Ct. 276, 279, 49 L. Ed. 518; Buckeye Power Co. v. E. I. DuPont de Nemours Co., D. C. 196 Fed. 514. *And since the adoption of the Rules of Civil Procedure, the cases require of the pleader only a plain and simple statement of his case in conformity to Rule 8 (a), 28 U.S.C.A. following Section 723(c). It is not necessary to set out in detail the acts complained of nor the circumstances from which the pleader draws his conclusions that violations of the Acts of Congress have occurred and the pleader has been damaged.*" (Emphasis added)

The averments in the complaint show clearly the violations charged. So it is evident that the complaint is good against both attacks for failure to state a claim and for lack of jurisdiction.

[fol. 199] In ruling upon this matter, I am merely indicating in a general way the grounds of decision. Time does not permit the writing of an extended opinion. Such an opinion would add little to the elaborate discussions of the scope of the anti-trust statutes which are contained in my own opinion already cited, and in several other recent opinions which I have written on the subject, such as United States vs. Food and Grocery Bureau, 1941, D. C. Cal., 41 Fed. Sup. 884; United States vs. Food and Grocery Bureau, 1942, D. C. Cal., 43 Fed. Sup. 965; United States v. Food and Grocery Bureau, 1942, D. C. Cal., 43 Fed. Sup. 974; and United States v. San Francisco Electrical Contractors Associations, 1944, N. D. Cal., 55 Fed. Sup. 57.

The Motion is, therefore, denied.

MOTION NO. IV

(To Strike from Complaint)

The motion is denied. I believe that the portion of Paragraph 26, which it is sought to strike, and which refers to the contractual and other relationships is not too nebulous. It would allow the Government to prove the results of the relations between the companies and the stations and dealers as well as the actual stipulations in the contract. And Paragraph 33, which it is also sought to strike, refers to certain practices, loans, forgiving of loans, sale of equipment at loss, and the like, as inducements for the undertaking for the exclusive sale of the products of the defendants. Both state facts material to the claim which the Complaint sets forth.

[fol. 200] MOTION NO. V

(For a more Definite Statement or Bill of Particulars)

The Motion for a more definite statement is denied. The Motion for a Bill of Particulars is granted as to items L, M, N, O, and P. It is denied as to all other lettered requests as to which particulars are asked.

As the operations complained of have continued for a long period of years, and, as it appears that the agreements

covered by specifications L, M, N, O and P have undergone changes through the years, I believe that the request of the defendants that the Government supply them with the full text of the particular distributor, dealership, equipment and other agreements, is reasonable. Ordinarily, such requests would be denied upon the ground that the agreements are in the possession of the defendants. But, in view of the existence of several editions of these agreements, as shown by the affidavit of the assistant Secretary of the defendant Standard Oil Company of California, it is quite evident that the Government must be relying upon a *particular edition*. If that be the case, the defendant is entitled to know the particular form on which the charges are based.

MOTION NO. VI

(For Inspection)

The motion is denied. Inspection is sought of the agreements as to which the Bill of Particulars have been granted. The need for inspection is, therefore, gone.

[fol. 201] The Government is allowed thirty days to furnish the Bill of Particulars granted under Motion V, and the defendants shall have thirty days, after being furnished with the Bill of Particulars, to answer to the Complaint.

Dated this 14th day of July, 1947.

(Signed) Leon R. Yankwich, Judge.

[fol. 202] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER ON MOTIONS—Filed July 14, 1947

The motions in the above-entitled cause, heretofore argued and submitted, are now decided as follows:

Upon the grounds set forth in the Memorandum Decision filed this day,

Motion No I for a Stay of Proceedings is denied.

Motion No. II to Dismiss is denied.

Motion No. III to Dismiss for Failure to State a Claim and for Lack of Jurisdiction is denied.

Motion No. IV to Strike from Complaint is denied.

Motion No. V for a more definite Statement or Bill of Particulars is granted as to Items L, M, N, O, and P, and denied as to all other lettered requests as to which particulars are asked.

[fol. 203] Motion No. VI is denied.

The Government is allowed thirty days to furnish the Bill of Particulars granted under Motion V, and the defendant shall have thirty days after being furnished with the Bill of Particulars, to answer to the Complaint.

Dated this 14th day of July, 1947.

[fol. 204] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF DEFENDANTS, STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC.—Filed Nov. 14, 1947

Defendants, Standard Oil Company of California (herein called "defendant Standard"), and Standard Stations, Inc., answering the complaint herein, admit, deny and allege as follows:

First Defense

1. Answering paragraph 1, deny that either of these defendants has violated or is violating any part or parts of either said Sherman Act or said Clayton Act;

2. Answering paragraph 2, deny that any violation or violations of law have occurred or are occurring or have been or are being carried out; deny that interstate commerce in petroleum or other products or automotive or [fol. 205] other accessories was or is involved or was or is described in said complaint or was or is carried on within the Southern District of California or the Central Division thereof;

3. Answering paragraph 3, admit that defendant, Standard Oil Company of California, is and at and since the commencement of this action was a Delaware corporation with its principal office in California located at San Fran-

cisco, but deny that its principal place of business is or during that period was located at San Francisco; admit that defendant, Standard Oil Company of California, is and at and since the commencement of this action was engaged in the business of producing, transporting, refining and marketing petroleum and petroleum products, but deny that it does or did during that period produce or refine petroleum or petroleum products in Oregon or Washington or Arizona or Nevada or New Mexico or Idaho or Utah, or that it does or did during that period transport or market petroleum or petroleum products in New Mexico;

4. Answering paragraph 4, admit that Standard Stations, Inc. is and at and since the commencement of this action was a Delaware corporation with its principal office in California located at San Francisco, but deny that its principal place of business is or during that period was located at San Francisco; admit that Standard Stations, Inc. is and at and since the commencement of this action was a wholly-owned subsidiary of Standard Oil Company of California and engaged in the business of managing service stations in California, Washington, Oregon, Arizona, Idaho, Nevada and Utah;

5. Answering paragraphs 5 to 14 inclusive, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraphs;

6. Answering paragraph 15, admit that defendant, Stand- [fol. 206] ard has petroleum holdings in certain fields located in California; admit that defendant Standard has and at and since the commencement of this action had refineries located at Richmond, El Segundo and Seguro, California; admit that a part of the petroleum products processed at Standard's refineries located in California are and at and since the commencement of this action were ultimately sold and distributed to retail outlets and consumers in the Western Area, except New Mexico, but not in interstate commerce; save as herein expressly admitted, defendants deny the allegations of paragraph 15;

7. Answering paragraph 16, admit that defendants distribute and sell and arrange for the distribution and sale to retail outlets of automotive accessories not produced or manufactured by defendant Standard, and that said accessories are manufactured and produced by various concerns

and are in some cases shipped from factories and processing points to warehouses maintained by defendant Standard within the Western Area, exclusive of New Mexico, and that said accessories are distributed to retail outlets from said warehouses; admit that some of said factories and processing points are located in states other than those in which defendant Standard operates; admit that defendant Standard's products and said accessories are sold at retail in competition with defendants' competitors to consumers purchasing the same from retail outlets; save as herein expressly admitted, defendants deny the allegations of paragraph 16;

8. Answering paragraph 17, deny the allegations of said paragraph;

9. Answering paragraph 18, admit that defendants in competition wit competitors of defendant Standard have sought, within the Western Area, exclusive of New Mexico, to lease, take title to, and/or enter into contractual relation- [fol. 207] ships with operators of, certain service station sites; save as herein expressly admitted, defendants deny the allegations of paragraph 18;

10. Answering paragraph 19, admit that prior to 1926 defendant Standard acquired title to certain service station sites and that in so doing it was in competition with its competitors; admit that about 1926 defendant Standard in competition with its competitors began to acquire retail outlets by obtaining leases of certain service station sites; admit that commencing on or about 1927 defendant Standard in competition with its competitors subleased certain service station sites, which it had leased, to independent service station operators upon terms by which the latter would sell at the subleased premises only the petroleum products of defendant Standard; save as herein expressly admitted, defendants deny the allegations of paragraph 19;

11. Answering paragraph 20, admit that beginning on or about 1931 use of the so-called "lease and agency" plan was begun, and that under this method certain operators were constituted agents of defendant Standard, and that the agreements with such agents in certain cases, but not every case, provided that the agent would handle only such gasoline, lubricating oils and other petroleum products as

were manufactured or marketed by defendant Standard; save as herein expressly admitted, defendants deny the allegations of paragraph 20;

12. Answering paragraph 21, admit that subsequent to on or about 1937 defendant Standard ceased the use of the so-called "lease and agency" plan; admit that subsequent to on or about 1937 certain service station operators who were sublessees of defendant Standard were obligated by such subleases to handle and sell on the leased premises only such petroleum products as are sold them by defendant Standard; save as herein expressly admitted, defendants [fol. 208] deny the allegations of paragraph 21;

13. Answering paragraph 22, admit that defendant Standard owns or leases from owners or lessees approximately 4100 service stations in the Western Area, and that approximately 1100 are directly operated as company service stations and deal exclusively in defendant Standard's petroleum products and sponsored products; and that approximately 1800 of said service stations are leased to independent operators by leases which obligate the lessee to handle and sell on the leased premises only such petroleum products as are sold the lessee by defendant Standard; save as herein expressly admitted, defendants deny the allegations of paragraph 22;

14. Answering paragraph 23, admit that defendant Standard has contractual relationships with operators of approximately 1100 service stations and other retail outlets in the Western Area in addition to service stations owned by defendant Standard or leased by it from owners or lessees; save as herein or hereinafter expressly admitted, defendants deny the allegations of paragraph 23;

15. Answering paragraph 24, admit that defendant Standard Stations, Inc., has negotiated on behalf of defendant Standard certain of the leases and contracts herein referred to, and has executed some of such leases and contracts in the name and on behalf of defendant Standard; save as herein expressly admitted, defendants deny the allegations of paragraph 24;

16. Answering paragraph 25, defendants are without knowledge or information sufficient to form a belief as to whether motorists who prefer defendant Standard's brands

of gasoline over those of other producer-wholesalers have brand preferences for lubricants and automotive accessories other than those manufactured or sponsored by defendant Standard; admit that the retail outlets with which defendant Standard has leases and contractual relations are during [fol. 209] the existence thereof subject to the provisions of the respective leases and contracts; save as herein expressly admitted, defendants deny the allegations of paragraph 25;

17. Answering paragraph 26, defendants are without knowledge or information sufficient to form a belief as to whether numerous or any manufacturers or producers of petroleum products or automotive accessories located in states outside the Western Area, other than those producers and manufacturers whose products are sponsored by defendant Standard, are or since the commencement of this action were prepared to or have attempted to sell their respective brands of petroleum products or tires or tubes or batteries or spark plugs or waxes or polishes or other automotive accessories, to retail outlets with which defendant Standard has leases or contractual relations within the Western Area; admit that the retail outlets with which defendant Standard has leases and contractual relations are during the existence thereof subject to the provisions of the respective leases and contracts; save as herein expressly admitted, defendants deny the allegations of paragraph 26;

18. Answering paragraph 27, deny the allegations of said paragraph;

19. Answering paragraph 28, admit that certain dealer agreements are in force and effect which provide among other things that the dealer agrees to buy from defendant Standard and defendant Standard agrees to sell all of such dealer's requirements of petroleum products used or sold or bought to be used or sold by such dealer at a stated place of business during a stated limited period, and that such agreements provide that the petroleum products to meet such dealer's requirements shall be those brands of gasoline, lubricating oils and other petroleum products sold by defendant Standard to dealers generally in such dealer's [fol. 210] vicinity; save as herein expressly admitted, defendants deny the allegations of paragraph 28;

20. Answering paragraph 29, admit that certain dealer agreements TBA are in force and effect which provide among other things that the dealer agrees to buy from defendant Standard and defendant Standard agrees to sell all of such dealer's requirements of petroleum products used, sold or bought to be used or sold by such dealer at a stated place of business during a stated limited period and that defendant Standard agrees to sell or consign to such dealer and the latter agrees to purchase or receive from defendant Standard and stock and offer for sale all of such dealer's requirements of tires, tubes, and batteries used or sold or bought to be used or sold by such dealer at such stated place of business during such limited period; save as herein expressly admitted, defendants deny the allegations of paragraph 29;

21. Answering paragraph 30, admit that certain petroleum products and equipment agreements are in force and effect which provide among other things that the dealer agrees to buy from defendant Standard and defendant Standard agrees to sell all of such dealer's requirements of petroleum products used or sold or bought to be used or sold by such dealer at a stated place of business during a stated limited period, and that such agreements provide that as additional consideration for the dealer's execution of the agreement, defendant Standard agrees to install certain stated equipment or facilities, title to such equipment or facilities to remain in defendant Standard, and that in certain cases said agreements provide that if, during the life of said agreement including all extension thereof the dealer shall comply with all of the terms and provisions thereof and of any other agreement between the dealer and defendant Standard, and if the dealer shall not exercise any rights the dealer may have to terminate such agree-
[fol. 211] ments, except for defendant Standard's default, and if there shall be no termination of such dealer's tenancy of the premises, then at the expiration of such extended term, or at the expiration of the term thereof, in the absence of such extension, defendant Standard shall give such dealer a bill of sale to all of the personal property and trade fixtures placed by defendant Standard in, under, or upon the premises, or purchased by defendant Standard from such dealer during the first year of the term of said

agreement; save as herein expressly admitted, defendants deny the allegations of paragraph 30;

22. Answering paragraph 31, admit that certain subleases are in force and effect which provide among other things that a lessee leases certain premises from defendant Standard and that such lessee shall handle and sell on the leased premises only such petroleum products as are sold such lessee by defendant Standard and that such lessee agrees not to store, handle, sell or distribute on or from said premises any petroleum products of any description other than those petroleum products sold such lessee by defendant Standard, and that in certain cases subleases heretofore made but not now being made provide that the lessee shall have the right during the term thereof to occupy and use the leased premises for the sale and distribution of only such petroleum products and other merchandise as may be sold the lessee by defendant Standard and that the lessee agrees not to store, handle, sell or distribute on or from the leased premises any petroleum products or merchandise of any description other than that sold to the lessee by defendant Standard, except as otherwise authorized in writing by the latter; save as herein expressly admitted, defendants deny the allegations of paragraph 31;

23. Answering paragraph 32, deny the allegations of said paragraph;

24. Answering paragraph 33, admit defendants have in [fol. 212] the past in certain cases employed the methods referred to in sub-paragraphs (a), (b), (c), (d) and (e) of said paragraph 33 in order to meet the competition of defendants' competitors who were employing the same methods and offering like or similar benefits to operators; deny that the method referred to in sub-paragraph (b) was employed by defendants subsequent to on or about May 1, 1946, or that it had been employed prior thereto save in rare instances; admit that in certain cases said benefits may have been one of the reasons why the operator entered into a contract, but that in many such cases and in other cases said benefit was accorded the operator for the purpose of promoting his sales, or for some other reason quite apart from the making of any contract or lease; save as herein expressly admitted, defendants deny the allegations of paragraph 33;

25. Answering paragraph 34, deny the allegations of said paragraph;

SECOND DEFENSE

26. That plaintiff has failed to join indispensable parties, in that plaintiff has failed to join as parties hereto the persons and parties with whom defendants are alleged to have made the written contract and leases and oral agreements now in force and effect which are referred to in paragraphs 27, 28, 29, 30, 31 and 32 of the complaint herein, which contracts and leases and oral agreements plaintiff prays be declared void and of no effect;

THIRD DEFENSE

27. That plaintiff has failed to join parties who ought to be parties hereto if complete relief is to be accorded between those already parties hereto, in that plaintiff has failed to join as parties hereto the persons and parties with whom defendants are alleged to have made the written contracts and leases and oral agreements now in force and effect [fol. 213] which are referred to in paragraphs 27, 28, 29, 30, 31 and 32 of the complaint herein, which contracts and leases and oral agreements plaintiff prays be declared void and of no effect;

FOURTH DEFENSE

28. That it is and long has been the practice of defendants and their competitors to make contracts and leases with independent buyers providing that the buyer shall, for a stated period, purchase from the seller and that the seller will sell to the buyer all or substantially all of the buyer's requirements of certain products at a certain location; that said practice arose and has been pursued for the reason that buyers of said products have required contracts and leases which by their terms would assure them over a definite period such supply of said products as would be requisite to satisfy their requirements; that the contracts and leases made by defendants, as well as numerous other contracts and leases, made by numerous competitors of defendants in the Western Area, of like or similar content, substance and purpose, were made because of said requirement of said buyers and because said buyers could not but for the security afforded by said contracts and leases carry on or conduct their retail businesses; that if defendants

had failed to conform to said practice, defendants' numerous and aggressive competitors would have entered into contracts and leases with said buyers conforming to said practice and as a result thereof the competition of defendants for the business of said buyers and prospective buyers would have been eliminated;

FIFTH DEFENSE

29. The application and enforcement herein sought of section 1 of the Act of Congress of July 2, 1890, as amended, 26 Stat. 209, 15 U.S.C. 1, commonly known as the Sherman Act, and section 3 of the Act of Congress of October 15, [fol. 214] 1914, as amended, 38 Stat. 731, 15 U.S.C. 14, commonly known as the Clayton Act, was and is discriminatory and inequitable and in violation of the Fifth Amendment of the Constitution of the United States and deprives and will deprive defendants of property without due process of law, in that certain contracts and leases made by defendant Standard are alleged to be in violation of said Acts of Congress and are sought to be declared void and of no effect, while numerous other existing contracts and leases made by numerous aggressive competitors of defendants throughout said Western Area of like or similar content, substance and purpose, are not and have not been legally attacked or sought to be enjoined by plaintiff, and defendants are informed and believe and upon such ground allege that the latter contracts and leases will not be legally attacked or sought to be enjoined by plaintiff, by reason whereof a decree herein, as prayed by plaintiff, declaring said contracts and leases of defendant Standard void and of no effect or enjoining performance thereof would enable defendants' said competitors to contract with defendants' existing wholesale customers and prospective wholesale customers upon terms which would be denied defendants with the result that defendants would be unable to compete on equal terms with their competitors, whereby defendants would be deprived of the custom and patronage of their customers, and defendant Standard would lose its investment amounting to many millions of dollars, and defendants would be eliminated from competition for the business of said customers and numerous prospective customers, all to defendants' irreparable injury;

SIXTH DEFENSE

30. At the time of the commencement of this action there was and is now pending and undisposed of in the District Court of the United States for the District of Columbia, another action brought by this plaintiff against these de- [fol. 215] fendants and others, the same being No. 8524 and entitled "United States of America, Plaintiff, vs. American Petroleum Institute, et al., Defendants," wherein the same charges were and are made and the same cause of action, if any, was and is alleged and asserted, and the same relief was and is sought by plaintiff as in this action.

Wherefore, defendants severally pray that proceedings herein be stayed pending a final determination of said action No. 8524, and that plaintiff take nothing at any time by reason of its complaint herein, and that this action be dismissed, and for such costs as may lawfully be awarded defendants, and for such other and further relief as may be meet and equitable.

Lawler, Felix & Hall, Pillsbury, Madison & Sutro, Felix T. Smith, John M. Hall, by John M. Hall, Attorneys for defendants.

[fol. 216] IN THE DISTRICT COURT OF THE UNITED STATES

In and for the Southern District of California, Central Division

No. 6159-Y, Civil

(Nature of Pleading)

Answer—(of defendants, Standard Oil Company of California and Standard Stations, Inc.)

Received copy of the within Answer this 14th day of November 1947.

William C. Dixon, Special Assistant to the Attorney General, W. Alan Thody, Special Assistant to the Attorney General, by ——— ———, Attorneys for Plaintiff.

Received copy of the within Answer this 14th day of November 1947.

W. Alan Thody, Attorney for United States.

[fol. 217] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

STIPULATION FOR AMENDMENT OF ANSWER AND ORDER THEREON.—Filed April 19, 1948

It is hereby stipulated by and between the parties, by their respective counsel, that defendants' answer herein may be amended in the following particular:

That the first clause of paragraph 13 of said answer, which now reads:

> "Answering paragraph 22, admit that defendant Standard owns or leases from owners or lessees approximately 4100 service stations in the Western area, . . ."

may be amended so as to read:

> "Answering paragraph 22, admit that defendant [fol. 218] Standard owns or leases from owners or lessees approximately 5100 service stations in the Western area, . . ."

Dated, April 6, 1948.

William C. Dixon, Special Assistant to the Attorney General. W. Alan Thody, Special Assistant to the Attorney General, by William B. Dixon, Attorneys for plaintiff.

Lawler, Felix & Hall, Pillsbury, Madison & Sutro, John M. Hall, by John M. Hall, Attorneys for defendants.

It is so ordered.

Dated, April 19th, 1948.

Leon R. Yankwich, Judge.

[fol. 219] IN THE DISTRICT COURT OF THE UNITED STATES

Southern District of California
Central Division

No. 6159-Y Civil

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., *Defendants*.

[File endorsement omitted.]

[fol. 220] APPEARANCES:

For the Plaintiff: William C. Dixon, Special Assistant to the Attorney General; W. Alan Thody, Special Assistant to the Attorney General; Lawrence W. Somerville, Special Attorney Anti-Trust Division; Theodore Driscoll, Special Attorney Anti-Trust Division; Tom C. Clark, Attorney General; James M. Carter, United States Attorney.

For the Defendants: Lawler, Felix & Hall, by John M. Hall; Pillsbury, Madison & Sutro, by Everett A. Mathews.

OPINION—Filed June 7, 1948

[fol. 221] By this suit in equity, the Government seeks a decree adjudging that certain practices engaged in by the defendants and certain contracts entered into by them, unreasonably restrain interstate trade and commerce in violation of Section 1 of the Sherman Anti Trust Act (1), and substantially lessen competition and tend to create a monopoly in a line of commerce, in violation of Section 3 of the Clayton Act. (2) The Government asks us to declare the exclusive supply provisions in the contracts and the practices flowing from them to be void and of no effect.

In addition, we are asked to enjoin the defendants, in perpetuity, from entering into or enforcing any contract, agreement, or understanding, express, or implied, with any independent service station operator or garage operator, or from inducing or compelling, or attempting to induce or compel, any such person from entering into any contract, agreement or understanding, which has any of the following requirements:

(a) That the Independent Service Station Operator or Garage Operator shall secure all his requirements of petroleum products from defendant Standard, or shall not handle the petroleum products of any other company;

(b) That the Independent Service Station Operator, or Garage Operator shall secure all his requirements of any one or more types of automobile accessories from or through defendants Standard and Standard Stations; [fol. 222] Inc., or will not handle accessories competitive with those distributed or sponsored by defendants, Standard and Standard Stations, Inc.

(c) That the sale of any petroleum product or automotive accessories to any Independent Service Station Operator, or Garage Operator shall be conditional on the sale of other petroleum products or automotive accessories.

The action was instituted on January 2, 1947. Many proceedings have taken place before the trial and an extensive file has been built up. However, as a case of this character must be determined on the basis of facts existing at the time of the trial, it is not necessary to give a detailed analysis of the pleadings in the case or the proceedings before the court.

What precedes is sufficient for the purpose of the discussion to follow.

YANKWICH, District Judge:

I

THE PROVED FACTS

Notwithstanding the lengthy trial and the large number of exhibits introduced, the issues in the case are rather narrow, as will appear further on in the opinion when we expound the legal principles which control the case. [fol. 223] There is, therefore, no need to review elaborately the facts, proved. A brief summary will suffice.

The defendant Standard Oil Company of California is a Delaware corporation with its principal place of business at San Francisco, California. It is engaged in the business of producing, transporting, refining and marketing petroleum and petroleum products, principally in the states of

California, Oregon, Washington, Arizona, Nevada, New Mexico, Idaho and Utah.

The defendant Standard Stations, Incorporated, is a corporation organized under the laws of Delaware with its principal place of business at San Francisco. It is a wholly-owned subsidiary of Standard Oil Company of California, and is engaged in the business of managing service stations in the seven states just mentioned. The number of these stations is 1063.

As the issues have narrowed themselves by the proof, no further reference need be made to these stations so operated which have been referred to in the evidence as "employe operated stations." The Government does not question (indeed, it could not) the right of the Standard Oil Company of California to operate its own stations and sell therein any product it manufactures or distributes. Hence when we refer to "Standard" in what follows, it will be understood that the reference is to Standard Oil Company of California, the parent company, actually engaged in what, for brevity, we shall call "the oil business".

The evidence in the cases shows that, as of March 12, 1947, Standard, in addition to the company operated serv- [fol. 224] ice stations, had contractual arrangements with 7145 stations in the area. The relationship of Standard to these stations was governed by the five types of agreements entered into with the operators of the stations. They were:

(1) "Dealer Agreements," of which there were 1656, containing the following clause:

"1. Standard Oil Company of California, a corporation hereinafter called 'Company' agrees to sell to —— hereinafter called 'Dealer', and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at ——. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity."

(2) "Distributor Agreements", of which there were 556, containing the following:

"Company agrees to sell to Distributor, and Distributor agrees to buy from Company and stock and offer for sale all of Distributor's requirements of petroleum products

used or sold or bought to be used or sold by Distributor in the conduct of his business on the premises hereinafter described. The petroleum products to meet Distributor's requirements hereunder shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by Standard Stations, Inc. in Distributor's vicinity, and Distributor agrees not to store, handle, distribute, or sell any other brand or brands of [fol. 225] petroleum products at or from the station."

(3) "PETROLEUM PRODUCTS AND EQUIPMENT AGREEMENTS", of which there were 912, containing this clause:

"1. Standard Oil Company of California, a corporation, hereinafter called 'Company', agrees to sell to —— hereinafter called 'Dealer', and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at ——. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity."

(4) "DEALER AGREEMENT TBA", of which there were 2221, having this clause:

"1. Standard Oil Company of California, hereinafter called 'Company', agrees to sell to —— hereinafter called 'Dealer', and Dealer agrees to buy from Company, all Dealer's requirements of petroleum products used, sold, or bought to be used or sold, by Dealer at ——, hereinafter called 'said premises'. The petroleum products to meet Dealer's requirements hereunder shall be those brands of such products generally sold by Company to its Dealers."

(5) "SUBLEASE AGREEMENTS", of which there were 1800, containing the following clause:

"Lessee shall handle and sell on the leased premises only such petroleum products as are sold Lessee by Lessor, and [fol. 226] Lessee agrees not to store, handle, sell, or distribute on or from said premises any petroleum products of any description other than those petroleum products sold to Lessee by Lessor. The price payable by Lessee to Lessor for said petroleum products shall be Lessor's posted price for the same or similar products to its Dealers generally in Lessee's vicinity at time and place of delivery."

The choice of the type of agreement was the dealer's. And the agreements were terminable by him on six months' notice. Each of these agreements contained provisions which, both by the language used and the limitations of liability, stressed the character of the agreement as seeking to establish the dealer as an independent contractor. Dealer Agreements (Class I) contained the most elaborate provisions. They are here given in full:

"6. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees to protect, defend, and hold harmless the Company against all claims for damage to property (including Dealer's property), or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about said premises, either in the mainte-
[fol. 227] nance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

"7. In the performance of this agreement Dealer is engaged in an independent business and nothing contained shall be construed as reserving to Company any right to control Dealer with respect to his conduct in the performance of this agreement. Company reserves no right to exercise any control over any of Dealer's employees and all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working

for him in connection with the performance of this agreement.

"8. Any tax, or the amount thereof, now or hereafter imposed, levied, or assessed by any governmental authority upon, measured by, incident to, or as the result of the transaction herein provided for, or the transportation, production, or manufacture of the goods, the subject matter of this agreement, shall, if collectible or payable by the Company, [fol. 228] be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for."

The other types of agreement aimed to achieve the same result.

The history of the use of the various types of agreement shows that, beginning in 1938, the dealer agreements were begun to supersede the authorized distributor agreements which had obtained before that date, and that, beginning with the year 1944, Type 4 (TBA) came into almost exclusive use. There is duplication of agreements in that a single station may operate under several types of agreement. Hence the actual number of gas station outlets is 5197. The number of stations operating under Form 2 has since been reduced to 232. In addition to this, Standard had 742 open accounts and 1063 company-operated stations, or, as they have been called in this case, employe-operated stations.

The evidence in the record shows beyond cavil that the effect of these agreements was to limit the dealer operating under any of them to the handling of petroleum products of Standard and also to the marketing of tires, tubes, batteries and accessories controlled or handled by Standard. If they handled others, they did not do so openly. The agreements were so interpreted by those operating under them,—as various operators from various states testified. Indeed, witnesses of the defendant very forthrightly stated that the operators were expected to confine [fol. 229] themselves to Standard products and accessories, the exception being only those rare cases—especially during the War—when they were unable to supply the quantity asked, in which event, the supervising employes of Standard would "shut their eyes" to the infractions.

The record also shows that, as to tires, tubes, batteries and accessories, Standard reserved the right to determine

the amounts it would furnish. As to the other accessories,—which included spark plugs, sun visors, fan belts, hub caps, and all small parts of automobiles, which can easily be replaced at a service station—the requirement was up to the dealer himself. Tires, tubes and batteries were not, as a rule, sold to operators of stations other than those under contract with Standard,—especially during the time of shortage. Its petroleum products and accessories were sold to other station operators, particularly after the war scarcity ended. The representatives of other companies manufacturing petroleum products, tires, tubes, batteries and other accessories, testified that they could not sell their products to stations under contract with Standard, except in rare instances, and that, *surreptitiously*. When a station was converted into a Standard station, whatever custom in non-Standard products they had before ceased. To maintain the goodwill of the operators of the stations, Standard assisted them financially, made loans which were later discounted, furnished many valuable services, and expended large sums of money in advertising, in educating the operators in the manner of handling the products, in building the stations, adding facilities to them, repairing and improving them,—all of which meant large expenditures of money. As a result, Standard has a sixteen and one-[fol. 230] half million dollar capital investment in the dealer stations.

When salesmen or supervisors of Standard found competitive products, they "urged",—as they testified—or, as the operators testified, showed their displeasure, and, practically "ordered" their discontinuance or substitution. Many of the competitive products so offered for sale and shut out of the stations under contract with Standard were produced outside of the States in which the stations were located, or were shipped in interstate commerce.

So there cannot be any question that, at least so far as these products are concerned, the practice of which the Government complains, affected the flow of goods and products in interstate commerce.(3) The character of the result and its legality, as well as the legality of the restrictive clauses themselves are questions of law.

To them we now direct our attention.

The Law Today

(A) Exclusive Supply Provisions:

The case does not require an extended review of the principles which courts have evolved in interpreting the Sherman Anti-Trust and Clayton Acts. I have had occasion to discuss the scope and nature of anti-trust legislation and its application both to activities which are local and to those which transcend state limits, in several opinions.(3) [fol. 231] There is another reason for confining ourselves to the more recent decisions of the Supreme Court: They have modified, to a great extent, some of the legal norms declared in prior cases.(4) And the problem in this case can be narrowed down to two rather simple inquiries. They are: (a) Are agreements of the type involved in this case,—as summarized briefly in the preceding portion of the opinion—violative of either or both the statutes. Which, in reality, comes down to this: Is an agreement by an oil company, engaged in the production and distribution of petroleum products, and the sponsoring and distribution of automobile parts and accessories, which obligates a gasoline station operator to supply his full requirements of petroleum products, tires, tubes, batteries, and other accessories, from the company, *of itself*, a violation of either of the Acts? If the answer to this question is in the affirmative, the inquiry is at an end. (b) If in the negative, we must determine whether the effect of the agreement as a restraint on commerce makes it invalid under either or both Acts.

Seeking an answer to these inquiries, I begin with the assumption that the General Motors exclusive supply case (5) is still the law. Which means that, at least under the Clayton Act, an agreement by a dealer, in consideration of being permitted to deal in a certain product, that he will not sell or offer to sell any products not manufactured or handled by the particular manufacturer, is not *per se* illegal. The opinion in the General Motors case states the question involved tersely. The Court had before it an agreement [fol. 232] which, not only indirectly forbade the handling of the products of other manufacturers, but *prohibited* specifically their use or sale in these words:

> "'Dealer agrees that he will not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and

chassis second-hand parts or used parts or any parts not manufactured by the Chevrolet Motor Company . . . .'" (6)

This eliminated not only parts not manufactured by them, but also second-hand and used parts. A complete monopoly was achieved. At the same time, the dealer was not granted exclusive selling rights in new parts and accessories. General Motors was, therefore, free to grant to other dealers in the same territory the same rights. The trial court dismissed the bill for want of equity. Affirming the decree, the Supreme Court said:

> "Upon the evidence adduced at the trial the District Court found that *the effect of the clause had not been in any way substantially to lessen competition or to create a monopoly in any line of commerce.*" (7)

I take this language to mean that, even when we are confronted with a contract which shuts out competition, we must, under the Clayton Act, determine its effect on the line of commerce.

Under the Sherman Act, the reasonableness or unreasonableness of the restraint is,—since the first Standard Oil decision in 1911,—an element to be considered. (8) *Both are questions of fact, the solution of which rests upon the* [fol. 233] *conditions obtaining in each particular case.*

The Socony-Vacuum case (9) and other cases which followed it express the view that the economic wisdom or unwisdom, or the economic benefit or detriment, of a restriction on commerce is not material, especially when we are dealing with a practice, such as price-fixing, which is illegal *per se*. But, at the same time, economic effect becomes material if we are dealing with a restraint other than price-fixing, a restraint which is monopolistic. Because, when this is the situation, it must appear that there is substantial lessening of competition or monopoly under the Clayton Act, before we can place a judicial interdict on it. We find this language in the Socony-Vacuum case:

> "Secondly, the fact that sales on the spot markets were still governed by some competition is of no consequence. *For it is indisputable that that competition was restricted through the removal by respondents of a part of the supply which but for the buying program would have been a factor in determining the going*

prices on those markets. But the vice of the conspiracy was not merely the restriction of supply of gasoline by removal of a surplus. As we have said, this was a well-organized program. The timing and strategic placement of the buying orders for distress gasoline played an important and significant role. Buying orders were carefully placed so as to remove the distress gasoline from weak hands. Purchases were timed. Sellers were assigned to the buyers so that regular [fol. 234] outlets for distress gasoline would be available. The whole scheme was carefully planned and executed to the end that the distress gasoline would not overhand the markets and depress them at any time. And as a result of the payment of fair going market prices a floor was placed and kept under the spot markets. Prices rose and jobbers and consumers in the mid-western area paid more for their gasoline than they would have paid but for the conspiracy.

"Competition was not eliminated from the markets; but it was clearly curtailed, since restriction of the supply of gasoline, the timing and placement of the purchases under the buying programs and the placing of a floor under the spot markets obviously reduced the play of the forces of supply and demand.

"The elimination of so-called competitive evils is of no legal justification for such buying programs. The elimination of such conditions was sought primarily for its effect on the price structures. Fairer competitive prices, it is claimed resulted when distress gasoline was removed from the market. But such defense is typical of the protestations usually made in price-fixing cases. Ruinous competition, financial disaster, evils of price-cutting and the like, appear [fol. 235] throughout our history as ostensible justifications for price-fixing. If the so-called competitive abuses were to be appraised here, the reasonableness of prices would necessarily become an issue in every price-fixing case. In that event, the Sherman Act would soon be emasculated; its philosophy would be supplanted by one which is wholly alien to a system of free competition; it would not be the charter of freedom which its framers intended."(10)

(B) Effect of Restriction:

What Mr. Justice Douglas says applies with greater force to a restrictive practice other than price-fixing. The fact that it may be beneficial is not material, if, in effect, it is an unreasonable restraint. (11)

Judge Learned Hand stressed these very points in the Fashion Originators' Guild case. (12) He applied the reasoning of the Socony-Vacuum case to a case not involving price-fixing. And, with that clarity of language so characteristic of his writing, he showed that economic benefits cannot be taken into consideration if, in fact, there be substantial restriction of commerce. The opinion says:

". . . Many trade combinations which affect competition are lawful, when they are designed to prevent trade 'abuses'; they are 'reasonable' though perhaps to say so is no more than to state the problem. Appalachian Coals, Inc. v. United States, 288 U. S. 344, 374, 53 S. Ct. 411, 77 L. Ed. 825; Sugar Institute v. United [fol. 236] States, 297 U. S. 553, 598, 56 S. Ct. 629, 80 L. Ed. 859. Certainly it is not true that the lawfulness of every combination depends upon whether it 'reasonably' corrects trade 'abuses'; there are some combinations that nothing will excuse. The accepted rubric for this is that when the means are unlawful per se, the purposes of the confederates will not justify them. Sugar Institute v. United States, supra, 297 U.S. 553, page 599, 56 S. Ct. 629, 80 L. Ed. 859." *The most recent example of this is the Supreme Court's reaffirmation of the unconditional illegality of price-fixing in spite of the probability that the combination in fact benefited the industry.* United States v. Socony-Vacuum Oil Co., 210 U.S. 150, 60 S. Ct. 811, 84 L. Ed. 1129. However grave the industrial disorders, that remedy was not permissible; the industry may restore itself by many devices, but not by all. * * * Price-fixing is not, however, the only means unlawful per se: *The interest of the consumer is not all that determines the 'reasonableness' of a contract 'in restraint of trade'. It is also unlawful to exclude from the market any of those who supply it—assuming that there is no independent reason by virtue of their conduct to justify their exclusion—and it is no excuse for doing so that their exclusion will result in benefits to consumers, or to the*

producers who remain. W. W. Montague & Co. v. [fol. 237] Lowry, 193 U.S. 38, 47, 24 S. Ct. 307, 48 L. Ed. 608; Eastern States Retail Lumber Dealers Association v. United States, 234 U.S. 600, 611, 34 S. Ct. 951, 58 L. Ed. 1490, L.R.A. 1915A, 788; Binderup v. Pathe Exchange, 263 U.S. 291, 311, 312, 44 S. Ct. 96, 68 L. Ed. 308; Anderson v. Shipowners Association, 272 U.S. 359, 363, 47 S. Ct. 125, 71 L. Ed. 298; Bedford Cut Stone Co. v. Journeymen Stone Cutter's Association, 274 U.S. 37, 54, 47 S. Ct. 522, 71 L. Ed. 916, 54 A.L.R. 791; Paramount Famous Corp. v. United States, 282 U.S. 30, 43, 44, 51, S. Ct. 42, 75 L. Ed. 145; United States v. First National Pictures, Inc., 282 U.S. 44, 51 S. Ct. 45, 75 L. Ed. 151; National Harness Association v. Federal Tr. Comm. 6 Cir., 276 F. 705, 712; Wholesale Grocers Ass'n v. Federal Tr. Comm. 5 Cir., 277 F. 657, 663; Butterick Publishing Co. v. Federal Tr. Comm. 2 Cir., 85 F(2) 522. There is another reason supporting this conclusion. A successful combination among a part of the producers to exclude others, even when not accompanied by an agreement fixing prices, puts into their hands collectively the power to control the supply and with it the price. The fact that the power is not at the moment exercised is of no assurance that it may not be; if the effort succeeds and the combination is not disrupted, it may at any time be used, and there will then be no protection to the consumer.

"*Finally, it is of no consequence that the Guild* [fol. 238] *does not supply the whole market for women's dresses; it aims at a monopoly however small its share of total sales.* The reason is as follows: Although all dresses made after one design are fungibles, the different designs themselves are not fungibles. Each has its own attraction for buyers; each is unique however trifling the basis for preferring it may be. Hence to attempt to gather to oneself all possible reproductions of a given design is to attempt to create a monopoly, as at once appears from the fact that a copyright for it—and a fortiori a design patent upon it—would be ranked as a monopoly. It is true that the sanction of that monopoly may be very weak; it depends upon the design's attractions above other designs, often not a very important margin of advantage. But the same is true of nearly all monopolies, for there

are substitutes for most goods. As to each design therefore the Guild is seeking to establish a monopoly; and *it is unimportant whether its gross sales are large or small, as compared with those of all women's dresses. For these reasons the combination was unlawful per se;* the commission was right in refusing to hear any evidence in its excuse, for it could have no excuse; the case is the same as Millinery Creators' Guild v. Federal Trade Commission, supra, 2 Cir., 109 F(2) 175." (13)

The teaching of these cases is this: When we are dealing with price-fixing, we are dealing with a contract which is [fol. 239] invalid *per se* and violative of the Act. However, when we consider any other restrictions, their legality must be determined *by the nature of the contract in relation to the line of commerce which it may affect.* A contract by a manufacturer of a product which binds an agent who is used as an outlet to the exclusive use of his product *is not necessarily* a violation of either the Sherman Act or the Clayton Act. But it *may be* so under the Sherman Act, if it result in an unreasonable restraint of trade, and under the Clayton Act, if it result in a monopoly in a line of commerce or lessens competition substantially. (14)

The more recent decisions of the Supreme Court reaffirm these principles. (15) To quote from Federal Trade Commission v. Morton Salt Company (16):

> "The statute requires no more than that the effect of the prohibited price discriminations 'may be substantially to lessen competition . . . or to injure, destroy or prevent competition.' After a careful consideration of this provision of the Robinson-Patman Act, we have said that 'the statute does not require that the discrimination must in fact have harmed competition, but only that there is *a reasonable* possibility that they "may" have such an effect.' Corn Products Co. v. Federal Trade Comm'n, 324 U.S. 726, 742. Hence the Commission found what would appear to be obvious, that the competitive opportunities of certain merchants were injured when they had to pay respondent substantially more for their goods than their competitors had to pay. The findings are adequate.
> [fol. 240] "Fourth. It is urged that the evidence is inadequate to support the Commission's findings of

injury to competition. As we have pointed out, however, the Commission is authorized by the Act to bar discriminatory prices upon the 'reasonable possibility' that different prices for like goods to competing purchasers may have the defined effect on competition. That respondent's quantity discounts did result in price differentials between competing purchasers sufficient to influence their resale price of salt was shown by evidence."

The following quotation from the American Crystal Sugar case is also enlightening:

"The statute does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers. Nor does it immunize the outlawed acts because they are done by any of these. Cf. United States v. Socony-Vacuum Oil Co., 310 U. S. 150; American Tobacco Co. v. United States, 328 U. S. 781. The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated. Cf. United States v. South-Eastern Underwriters Assn. supra, at 553.

"Nor is the amount of the nation's sugar industry which the California refiners control relevant, *so long as control is exercised effectively in the area concerned.* Indiana Farmer's Guide v. Prairie Farmer, 293 U. S. 268, 279, United States v. Yellow Cab Co., 332 U. S. 218, 225, *the conspiracy being shown to affect interstate* [fol. 241] *commerce adversely to Congress' policy,* Congress' power to keep the interstate market free of goods produced under conditions inimical to the general welfare, United States v. Darby, 312 U. S. 100, 115, may be exercised in individual cases without showing any specific effect upon interstate commerce, United States v. Walsh, 331 U. S. 432, 437-438; it is enough that the individual activity when multiplied into a general practice is subject to federal control, Wickard v. Filburn, supra, or *that it contains a threat to the interstate economy that requires preventive regulation.*"

(C) The Meaning of "Unreasonable" and "Substantial."

What precedes calls for a further inquiry into what is or what is not unreasonable restraint and what is or what is not a substantial lessening of competition.

The words "reasonable" or "unreasonable" do not occur in the Sherman Anti-Trust Act. (17) They were read into the Act by the decisions of the Supreme Court. (18)

The phrases which forbid practices which result in substantial lessening of competition or monopoly occur in the Clayton Act. (19)

All these terms have a pragmatic content. The Courts, in applying them, have sought to evolve concrete criteria by which the effect of a particular practice on competition should be gauged. Their scope and limit was stated by the [fol. 242] Court in Fashion Originators' Guild of America v. Federal Trade Commission:

> "If the purpose and practice of the combination of garment manufacturers and their affiliates runs counter to the public policy declared in the Sherman and Clayton Acts, the Federal Trade Commission has the power to suppress it as an unfair method of competition. From its findings, the Commission concluded that the petitioners, 'pursuant to understandings, arrangements, agreements, combinations and conspiracies entered into jointly and severally' had prevented sales in interstate commerce, had 'substantially lessened, hindered and suppressed' competition, and had tended 'to create in themselves a monopoly'. And paragraph 3 of the Clayton Act (15 U. S. C. A. Sec. 14) declares 'It shall be unlawful for any person engaged in commerce, . . . to . . . make a sale or contract for sale of goods, . . . on the condition, agreement, or understanding that the . . . purchaser thereof shall not use or deal in the goods, . . . of a competitor or competitors of the . . . seller, where the effect of such . . . sale, or contract for sale . . . may be to substantially lessen competition or tend to create a monopoly in any line of commerce.' The relevance of this section of the Clayton Act to petitioners' scheme is shown by the fact that the scheme is bottomed upon a system of sale under which (1) textiles shall be sold to garment manufacturers only upon the condition and understanding that *the buyers will not use or deal in textiles which are copied from the*

[fol. 243] *designs of textile manufacturing Guild members; (2) garment manufacturers shall sell to retailers only upon the condition and understanding that the retailers shall not use or deal in such copied designs.* And the Federal Trade Commission concluded in the language of the Clayton Act that these understandings substantially lessened competition and tended to create a monopoly. We hold that the Commission, upon adequate and unchallenged findings, correctly concluded that this practice constituted an unfair method of competition.

"Not only does the plan in the respects above discussed thus conflict with the principles of the Clayton Act; the findings of the Commission bring petitioners' combination in its entirety well within the inhibition of the policies declared by the Sherman Act itself. Section 1 of that Act make illegal every contract, combination or conspiracy in restraint of trade or commerce among the several states; Sec. 2 makes illegal every combination or conspiracy which monopolizes or attempts to monopolize any part of that trade or commerce. Under the Sherman Act 'competition not combination should be the law of trade.' National Cotton Oil Co. v. Texas, 197 U. S. 115, 129. And among the many respects in which the Guild's plan runs contrary to the policy of the Sherman Act are these: *it narrows the outlets to which garment and textile manufacturers can sell and the sources from retailers can buy.* (Montague & Co. v. Lowry, 193 U. S. 38, 45; Standard Sanitary Mfg. Co. v. United States, 226 U. S. 20, 48-49); subjects all retailers and manufacturers who decline [fol. 244] to comply with the Guild's program to an organized boycott (Eastern States Retail Lumber Dealers' Assn. v. United States, 234 U. S. 600, 609-611); takes away the freedom of action of members by requiring each to reveal to the Guild the intimate details of their individual affairs (United States v. American Linseed Oil Co., 262 U. S. 371, 389); *and has both as its necessary tendency and as its purpose and effect the direct suppression of competition from the sale of unregistered textiles and copied designs* (United States v. American Linseed Oil Co., supra, at 389). In addition to all this, the combination is in reality an extra-governmental agency, which prescribed rules for the

regulation and restraint of interstate commerce, and provides extra-judicial tribunals for determination and punishment of violations, and thus 'trenches upon the power of the national legislature and violates the statute.' (Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 242.)

"Nor is it determinative in considering the policy of the Sherman Act that petitioners may not yet have achieved a complete monopoly. For '*it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition.*' (United States v. E. C. Knight Co., 156 U. S. 1, 16; Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 237." (20)

The approach to the problem has changed, as later cases indicate. (21) But the test of reasonableness is the same [fol. 245] which the court laid down in the first case (22). As there stated, while the Act defines the boundaries which could not be transgressed, it leaves the application of the standard laid down

"to be determined by the light of reason, guided by the principles of law and the duty to apply and enforce the public policy embodied in the statute, in every given case whether any particular act or contract was within the contemplation of the statute." (23)

And the test under the Clayton Act is equally practical. The validity or invalidity of a contract or practice is determined by a consideration of the methods of restraint which the particular contract or practice impose and the effect which they may have (24). The more recent cases interpret the language of the statute to include not only probable effects but also possible effects. (25)

In summary, when we are asked to determine unreasonableness of restraint under the Sherman Act, or substantiality in lessening competition or tendency to create a monopoly in a line of commerce under the Clayton Act, we must envisage the entire situation affected by the practices, and relate it to the object of both statutes, which is to maintain freedom in interstate commerce and trade and to prevent all attempts to monopolize them. (26) At times, courts speak of the "detriment" to the public resulting from a practice. (27) But they do not intend to legalize restraints

which *may be* beneficial to the public. As said by Judge Learned Hand:

> "Be that as it may, that was not the way that Congress chose; it did not condone 'good trusts' and condemn 'bad ones'; it forbade all. Moreover, in so doing [fol. 246] it was not necessarily actuated by economic motives alone. It is possible, because of its indirect social or moral effects, to prefer a system of small producers, each dependent for his success upon his own skill and character, to one in which the great mass of those engaged must accept the direction of a few. These considerations which we have suggested only as possible purposes of the Act, we think the decisions prove to have been in fact its purposes. It is settled, at least as to Sec. 1, that there are some contracts restricting competition which are unlawful, *no matter how beneficient they may be; no industrial urgency will justify them; they are absolutely forbidden.* Chief Justice Taft said as much of contracts dividing a territory among producers, in the often quoted passage of his opinion in the Circuit Court of Appeals in United States v. Addystone Pipe & Steel Co., 6 Cir., 85 Fed. 271, 46 L.R.A. 122." (28)

The harm to the public is gauged by the effect of the practices on the free flow of goods in interstate commerce and the maintenance of competition in that field. Consequently, practices which are likely to curtail or affect injuriously a measurable or sizable part of commerce are prohibited under both Acts. As I understand the pleadings, and the Government's position at the beginning of the trial, a judgment is sought decreeing that the clause in the contracts which, by its language and actual effect, as shown by the evidence, restricts the stations not employe-operated to the sale and use of petroleum products and accessories produced or supplied by Standard is illegal *per se*. We cannot agree. To the contrary, as we read the cases, exclusiveness of outlet is not, in itself, illegal. It becomes il- [fol. 247] legal only if it result in a substantial lessening of competition or the creation of monopoly in the line of commerce. (29) Indeed, the opinion of the Court in one of the latest cases on the subject indicates clearly that,—to use the language of Mr. Justice Douglas,—"the use of monopoly

power, however lawfully acquired, to foreclose competition, *to gain a competitive advantage, or to destroy a competitor*, is unlawful.'" (30)

The phrase "line of commerce" in the Clayton Act is to be given a broad and not a narrow meaning. It should be interpreted, not with relation to a particular outlet, but with relation to the entire "picture",—if one may be permitted to use the best colloquial equivalent to the German word *gestalt* (configuration). So the determination of monopoly in any "line of commerce" cannot be made to rest *solely* on the fact that certain outlets are closed. For, without indulging in a *reductio ad absurdum*, if we say that interfering with *any* outlet is, in itself, a monopoly, we find ourselves in the position of contending that, assuming one controlled one station outlet, we have a monopoly as to it. To amplify: It is common knowledge that national merchandising firms like Sears, Roebuck & Company, or Montgomery Ward, own establishments the country over. It is also well known that they control the type of goods which are sold in the branches, which they use as outlets, and which they own. But, assume that they did not own the branches, and that they operated some of them, under one of these various contract arrangements used here,—say a TBA contract. To my mind, it would be unrealistic to contend that, under such circumstances, the control of one of several such outlets [fol. 248] would constitute a monopoly. For this reason, I take the words "in any line of commerce" to mean a complete line of activity, not a *small* segment. This interpretation finds support in the following language of the Supreme Court:

> "The exercise of Congressional power under the Sherman Act, the Clayton Act, the Federal Trade Commission Act, or the National Motor Theft Act, has never been thought to be constitutionally restricted because in any particular case the volume of the commerce affected may be small. *The amount of the commerce regulated is of special significance only to the extent that Congress may be taken to have excluded commerce of small volume from the operation of its regulatory measure by express provision or fair implication.*" (31)

We must, therefore, ascertain the *actual* effect of the challenged clause on interstate commerce.

(D) Intra and Interstate Activities

Before doing so, we refer to the contention that the activities of Standard are local in character. Recent cases have obliterated the rigid distinction between intrastate and interstate activities. Activities purely local which interfere with interstate commerce comes under the interdiction of the anti-trust statutes. (32) The control of a commodity originating in interstate commerce, although exercised after it comes to rest in a state, does not take it out of the purview of the Sherman or Clayton Acts, if the flow is continuous, and if the restrictions affect it. (33) The latest decisions give effect to the broad definition of commerce contained in one of the older and leading cases on the subject:

[fol. 249] "The evidence shows that they and other defendants conspired to burden the free movement of live poultry into the metropolitan area. It may be assumed that some time after delivery of carload lots by interstate carriers to the receivers the movement of the poultry ceases to be interstate commerce. Public Utilities Comm'n v. Landon, 249 U. S. 237, 245; Missouri v. Kansas Gas Co., 265 U. S. 298, 309; East Ohio Gas Co. v. Tax Comm'n, 283 U. S. 465, 470-471. But we need not decide when interstate commerce ends and that which is intrastate begins. *The control of the handling, the sales and the prices at the place of origin before the interstate journey begins or, at the State of destination where the interstate movement ends may operate directly to restrain and monopolize interstate commerce.*" (34)

Without detailing the distributive system used by Standard, it is evident that there is constant interstate flow of the products it produces and distributes. And the interstate origin of the many competitive products, automobile supplies and accessories is also established. (35)

This satisfies fully the requirement of the statutes. For, if the exclusive supply agreements complained of by the Government be unreasonable or monopolistic in effect, they would affect the flow of commerce in several ways: (1) by channeling the products of Standard, regardless of interstate or intrastate source, through an exclusive group of outlets; (2) by denying to dealers the right to buy them; and (3) by denying to manufacturers of competitive products the rights to sell to the controlled outlets.

Whether they actually have such effect is our final inquiry.

[fol. 250] III

The Consequences of the Exclusive Supply Provisions

(A) *The "Appreciable Segment" Test.*

In the Associated Press case (36), the Supreme Court has set out criteria for determining the forbidden character of restrictive outlets under the Sherman Act, which are pertinent to the facts in this case:

"The restraint on trade in news here were no less than those held to fall within the ban of the Sherman Act with reference to combinations to restrain trade outlets in the sale of tiles, Montague & Co. v. Lowry, 1932 U. S. 38; or enameled ironware, Standard Sanitary Mfg. Co. v. United States, 26 U. S. 20, 48-49; or lumber, Eastern States Lumber Dealers' Ass'n v. United States, 234 U. S. 600, 611; or women's clothes, Fashion Originators' Guild v. Federal Trade Commission, supra; or motion pictures, United States v. Crescent Amusement Co., 323 U. S. 173. Here as in the Fashion Originators' Guild case, supra, 465, 'the combination is in reality an extra-governmental agency, which prescribes rules for the regulation and restraint of interstate commerce, and provides extra-judicial tribunals for determination and punishment of violations, and thus 'trenches upon the power of the national legislature and violates the statute.' Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 242. By the restrictive By Laws each of the publishers in the combination has, in effect, 'sur-[fol. 251] rendered himself completely to the control of the association.', Anderson v. Shipowners' Assn., 272 U. S. 359, 362, in respect to the disposition of news in interstate commerce. Therefore this contractual restraint of interstate trade, 'designed in the interest of preventing competition', cannot be one of the 'normal and usual agreements in aid of trade and commerce which may be found not to be within the (Sherman) Act . . . .' Eastern States Lumber Dealers' Assn. v. United States, supra, 612, 613." (37)

This is anticipatory of the criterion of "appreciable segment" as a test of unreasonableness or monopolistic substantiality, established in later cases. (38)

Some writers have expressed the view that the more recent decisions, and especially the Yellow Cab decision, substitutes a new and uniform concept or standard of illegality for the older ones under the Sherman Act, which considers the effect on "an appreciable segment" of commerce the test. They see in this the abandonment of the older, "quantitative" postulate which related the amount of the commerce involved to the whole commerce in the nation. (40) But I find the nucleus of this norm not only in the Associated Press case (41), but in older cases. (42). Thus, in a case involving control of advertising media in a certain field as the basis for a damage action under the Sherman Anti-Trust law, the Supreme Court held that it was invalid, although it applied to a limited geographic area or to a part of the commerce only. The Court used this language:

> [fol. 252] "The record contains no suggestion by respondents or by either court that petitioner's allegations are not sufficient to charge a violation of Secs. 1 and 2. Its right to recover does not depend upon the proportion that respondents control of the total farm paper advertisements in the entire country, and it was not required to prove that respondents imposed a restraint or attempted monopolization that would affect all commercial advertisements in all farm papers wherever published or circulated. The provisions of Secs. 1 and 2 have both a geographical and distributive significance and apply to any part of the United States as distinguished from the whole and to any part of the classes of things forming a part of interstate commerce. Standard Oil Co. v. United States, 221 U. S. 1, 61." (43)

And there is one lower court, well considered decision which found an illegal restriction in a limitation to a particular large customer,—the United States Government. (44)

It was insisted at the oral argument that the late cases, especially the Yellow Cab case (45), having arisen under the Sherman Act, do not control here. Granted that these rulings interpret that Act, they are, nonetheless, applicable to the present case for the obvious reason that the violations which the Government in this case charges are violations of both the Sherman and Clayton Acts.

As a rule, language used in interpreting one statute is

not conclusive of the meaning of other kindred statutes. However, the history of Anti Trust legislation shows that less is required to prove illegality under the Clayton Act [fol. 253] than under the Sherman Act. Rightly. For the object of the Clayton Act was to declare illegal, in their incipiency, acts which would only be illegal under the Sherman Act *in their full fruition*. Differently put, what, *in its result*, is an unreasonable restraint under the Sherman Act is, *in its beginning*, a substantial restraint under the Clayton Act, *if it is of a nature* likely to achieve such result.

It is argued that to apply this criterion would result in anomalous situations. If the operators of stations, instead of agreeing to buy their "requirements" of petroleum products, agreed to buy a definite quantity over a period of time, sufficient to satisfy their needs, this arrangement would, just as effectively, shut out competition. And yet, it is insisted that, although such arrangement would achieve the same result, it would not fall within any of the prohibitions of the anti-trust statutes.

But there is a distinction between the two situations. When a dealer agrees to take a specific amount of a product, there is a likelihood that *he may*, in case of failure of the supplier to comply with the agreement, or inexpected shortages or increased demands, or a desire to anticipate such shortages or demands, by overstocking,—seek competitive products. There is thus a possibility of access by competitors to the particular outlets.

Under the "requirements" contracts, the chance is completely cut off. Briefly stated, without a "requirements" contract, competitors may, in time, induce dealers to handle their products. With a contract, they never can. There is opportunity to deal with the competitors, and, hence, [fol. 254] possibility,—ay, probability, of freedom of action, when there is no restrictive contract. There is complete and final absence of freedom of dealing during the life of a contract, when it calls for exclusion. The shut-out is just as effective as an agreement to boycott products originating in interstate commerce. (46). Both "restrain or control the supply entering and moving in interstate commerce". (47)

(B) *Restraint: Entire or Fractional:*

(1) Comparative Figures:

The turn which our consideration of the case has taken calls for a statement of additional facts which, in fairness to the defendants, should be referred to, because they are the foundation for the contention that the practices here under attack do not violate either statute. They also serve to point to the fact that, in this case, the problem which confronts the court is to determine, in the light of the latest cases of the Supreme Court, which of the two methods of assaying specific facts which, in the main, are not in dispute, should control.

The facts to be alluded to present one facet of the problem. The practices which the Government seeks to prohibit are not of recent origin. To the contrary, they have been in effect for over 15 years. They are employed not only by Standard, but by its competitors in the Western Area, especially the "majors,"—Associated, Shell, General Petroleum, Texas Co., Union Oil Co., Richfield,—as their representatives have so forthrightly admitted. The following statistical data, culled from the record, show the comparative position of Standard in relation to its major competitors, omitting, for brevity the comparative number of stations:

[fol. 255]

State	Year	Gasoline Sales State Total	Retail Gallonage S. S. Inc.	Retail Gallonage Dealers	% of Total S. S. Inc.	% of Total Dealers
Calif.	1931	1,401,545	65,149	71,251	4.5	5.1
	1946	2,640,651	209,587	135,455	7.9	5.1
Oregon	1931	170,357	4,782	25,633	2.8	15.0
	1946	376,288	18,467	36,198	4.9	9.6
Wash.	1931	270,901	8,232	26,266	3.0	13.4
	1946	491,301	23,021	43,606	4.7	8.9
Ariz.	1931	99,564	1,210	11,994	1.2	12.0
	1946	170,075	11,973	16,526	7.0	9.7
Nev.	1931	22,549	303	3,576	1.3	15.9
	1946	55,079	3,785	8,287	6.9	15.0
Idaho	1931	59,293	150	5,396	0.3	9.1
	1946	143,304	2,417	14,576	1.7	10.2
Utah	1931	60,731		4,114		6.8
	1946	146,644	4,649	13,920	3.2	9.5
7 Western States	1931	2,084,940	79,825	158,299	3.8	7.6
	1946	4,023,342	273,899	268,568	6.8	6.7

[fol. 256]

Tire Replacement Shipments

State	Year	State Total	Retail Sales S. S. Inc.	Retail Sales Dealers	% of State Totals S. S. Inc.	% of State Totals Dealers
Calif.	1933	2,706,750	94,366	3,441	3.5	1
	1946	5,985,786	130,079	79,502	2.2	1.3
Oregon	1933	328,189	15,750	1,041	4.4	3
	1946	890,064	14,296	29,073	1.5	3.4
Wash.	1933	588,144	15,750	2,557	2.7	.4
	1946	1,244,310	14,296	30,688	1.1	2.5
Ariz.	1933	123,477	6,220	4,538	5.0	3.7
	1946	307,803	10,060	16,152	3.3	4.4
Nevada	1933	38,993	1,059	1,442	2.7	3.7
	1946	98,235	3,000	4,307	3.1	4.4
Idaho	1933	133,225	397	11	.3	2.4
	1946	327,450	2,294	9,511	.7	2.9
Utah	1933	136,475	132	21	.1	.0
	1946	327,450	3,530	10,229	1.1	3.1
Seven Western States	1933	4,055,250	132,350	10,523	3.3	.3
	1946	9,181,698	176,496	179,462	1.9	2.0

[fol. 257]

Replacement Battery Sales

State	Year	State Total	Retail Sales S. S. Inc.	Retail Sales Dealers	% of State Total S. S. Inc.	% of State Total Dealers
Calif.	1933	718,108	17,670	58	2.5	....
	1946	1,601,511	51,328	21,281	3.3	1.3
Oregon	1933	87,070	1,455	17	1.7	....
	1946	238,299	4,376	5,083	1.8	2.1
Wash.	1933	156,036	2,240	42	1.4	....
	1946	332,918	6,042	7,366	1.8	2.2
Ariz.	1933	32,759	806	33	2.5	0.1
	1946	82,353	3,542	3,877	4.3	4.7
Nevada	1933	10,345	134	24	1.3	0.2
	1946	26,383	1,459	1,120	5.6	4.3
Idaho	1933	35,345	68	....	0.2	....
	1946	87,610	1,042	2,369	1.2	2.7
Utah	1933	36,207	22	....	0.1	....
	1946	87,610	1,667	1,982	1.9	2.3
Seven Western States	1933	1,075,870	22,395	174	2.1	....
	1946	2,456,584	69,456	43,078	2.8	1.8

[fol. 258] Certain general inferences were drawn from these facts, at the argument. They are: The actual increase in the sale of petroleum products corresponds to the rise in the whole industry. The number of outlets over a period of ten years has been reduced from an average of 7650 to 6000. Between 1936 and 1946, Standard sales of gasoline increased 58.8 per cent. The industry increase for the same period was 64.7 per cent. For lubricating oil, Standard's increase was 62.9 per cent, the industry increase, 104.8 per cent. As to batteries, the increase in units for Standard was 46.5 per cent, for the industry, 41.8 per cent. The comparative figures, as to the increase for some of the other companies are: *Gasoline:* Union Oil Company, 99 per cent; General Petroleum, 165 per cent; and Tidewater Associated, 34 per cent. *Lubricating Oil:*

Union Oil Company, 98.2 per cent; General Petroleum, 174.9 per cent; and Tidewater Associated, 54.8 per cent.

Macmillan dispense their lubricating oil through some 10,000 accounts in the seven Western states. For Pennzoil oil Company, the outlets in 1916 were 2000, in 1946, 12,000. For Arthur Haven Company, the outlets were 3500 in 1946, in 1947, 7,000. During this period, the number of outlets for Standard was 5197. During the same period, the number of independent stations which handled gasoline of different companies, or, what has been referred to as "split pump" accounts, has increased, although they represent only 1.6 per cent of all the stations. Between 1931 and 1941, a ten-year period,—Standard constructed only 8 per cent of the newly constructed service stations upon vacant sites. Between 1942 and 1947, Standard's proportion of new construction was 8.7 per cent.

[fol. 259] (2) *The Other Side of the Shield:*

The other aspect of the problem must take into consideration the following facts: The gallonage of gasoline marketed has risen and the value of the commerce in petroleum and other products was $68,000,000.00 in 1947. The following statistical data bear on the extent of this commerce.

Total Gross Quantities of Gasoline Shipped from Standard Oil Company of California Refineries (Richmond, El Segundo and Bakersfield)

Year	Calif.	Ariz.	Nevada	Oregon	Wash.	Utah	Idaho
1946	15,371,753	698,933	391,715	3,279,260	3,827,403	45,351	2,258
1947	18,106,788	931,199	418,062	3,707,282	3,161,576	36,554	920

Note.—Gasoline shipped above is in general delivered to Company's storage. Requirements of all classes of trade are filled from such storage, and the Company has no records which would show what part of the above gasoline was received for distribution or sale to retail outlets.

Total Gross Quantities of Automobile Lubricating Oils Sold by Standard Oil Company of California and Standard Stations, Inc. Such Oils Were Shipped from Richmond and El Segundo Refineries (42 Gal. Barrels).

Year	Calif.	Ariz.	Nevada	Oregon	Wash.	Utah	Idaho
1946	492,226	27,012	9,569	63,525	79,982	17,016	14,177
1947	570,912	26,549	9,503	62,002	81,153	18,665	14,955

Note.—Company records are not kept showing shipments by state of destination. Above represents sales by States—export sales are not shown.

[fol. 260]

Total Gross Quantities of Gasoline Purchased or Acquired by Standard Oil Company of California (Other Than From Its Own California Refineries)

1946

	Calif.	Ariz.	Nev.	Ore.	Wash.	Utah	Idaho	N. M.	Texas
State from which shipped						639,458		4,032,233,570	
State of destination		237,602				471,735	168,083		

1947

State from which shipped						829,189		13,368,101,307	
State of destination		114,675				680,146	199,043		

NOTE.—Gasoline received above is in general delivered to Company Storage. Requirements of all classes of trade are filled from such storage, and the Company has no records which would show what part of the above gasoline was received for distribution or sale to retail outlets.

NOTE.—The above gasoline was acquired by purchase.

Total Gross Quantities of Gasoline Sold by Standard Oil Company of California to Retail Dealers (42 Gallon barrels)

Year	Calif.	Ariz.	Nev.	Oregon	Wash.	Utah	Idaho
1946	3,225,122	393,467	197,310	861,865	1,038,245	331,431	347,054
1947	2,937,558	431,385	223,973	1,040,264	1,233,551	365,244	393,200

Total Gross Quantities of Automotive Lubricating Oils Sold Retail Outlets Operated by Standard Oil Company of California (Standard Stations, Inc.) (42 Gal. barrels)

1946	72,928	8,871	4,450	19,475	23,448	7,469	7,830
1947	77,128	8,432	4,373	20,342	24,148	7,134	7,686

[fol. 261]

Total Gross Quantities of Gasoline Sold at Retail Outlets Operated by Standard Oil Company of California (Standard Stations, Inc.) (42 Gallon Barrels)

Year	Calif.	Arizona	Nevada	Oregon	Wash.	Utah	Idaho
1946	4,990,166	285,978	90,125	439,695	548,110	140,693	57,540
1947	5,343,288	293,355	112,179	502,070	604,133	121,109	67,208

Total Gross Quantities of Automotive Lubricating Oils Sold at Retail Outlets Operated by Standard Oil Company of California (Standard Stations, Inc.) (42 Gallon Barrels)

1946	80,064	5,836	1,796	8,213	10,458	2,317	1,272
1947	77,265	5,210	1,969	8,311	10,380	2,259	1,369

Total Number of Tires, Tubes, Batteries and Other Automotive Accessories Shipped by Companies Manufacturing or Supplying the Same to Standard Oil Company of California and or Standard Stations, Inc., or to Outlets on the Order of Standard Oil Company of California and or Standard Stations, Inc., From States Outside of California, Oregon, Washington, Arizona, Nevada, Idaho and Utah.

1946

State into which shipped	Tires	Tubes	Batteries
California		19,908	4,950
Oregon			
Washington			
Arizona			
Nevada			
Utah			
Idaho			
Total		19,908 (1)	4,950 (2)

[fol. 262]

1947

State into which shipped	Tires	Tubes	Batteries
California	31,158		1,692 (2) (3)
Oregon	8,459	5,004	800 (3)
Washington	10,226		
Arizona	3,969		1,298 (4)
Nevada			
Utah	3,509		879
Idaho			
Total	57,321 (5)	5,004 (1)	4,639

NOTE.—Source: (1) Alabama; (2) Pennsylvania; (3) Texas; (4) Oklahoma; (5) Michigan.

(3) *The Inconclusiveness of Comparative Figures:*

Over the Government's objection, I allowed many comparative statistics, of which the foregoing are examples, to go into the record. This was consistent with the view that in resolving the issues of this case, the potential or actual effect of the agreements is important in determining reasonableness of restraint under the Sherman Act and substantiality of restraint or tendency to create monopoly under the Clayton Act.

But, while the comparative figures bear on the question, they are not determinate. Substantiality of restraint or tendency to create monopoly is established by (a) the market foreclosed,—here represented by the controlled units,—and (b) the volume of controlled business, totalling here in value $68,000,000.00.

Fractionally speaking, the business done by the competitors with their own outlets or with those under contract is [fol. 263] much greater than the business of Standard,—both in volume and in money value. Nevertheless, the business of Standard is considerable. In effect, it amounts to a substantial lessening of competition and a monopoly of a sizeable segment of a line of commerce in a definite area—the seven Western states. What has *the tendency* to

achieve such result becomes, *in actual effect*, an unreasonable restraint. Even before adopting the "appreciable segment" test (48), the Supreme Court sought to avoid a rigid formula for finding reasonableness or unreasonableness. In the Trenton Potteries case, Mr. Justice Stone stated:

> "Reasonableness is not a concept of definite and unchanging content. Its meaning necessarily varies in the different fields of the law, because it is used as a convenient summary of the dominant considerations which control in the application of legal doctrines. Our view of what is a reasonable restraint of commerce is controlled by the recognized purpose of the Sherman Law itself. Whether this type of restraint is reasonable or not must be judged in part at least in the light of its effect on competition, for whatever difference of opinion there may be among economists, as to the social and economic desirability of an unrestrained competitive system, it cannot be doubted that the Sherman Law and the judicial decisions interpreting it *are based upon the assumption that the public interest is best protected from the evils of monopoly* * * * *by the maintenance of competition.*" (49).

It follows that there is illegal restraint here under both Acts, whether the commerce be considered quantitatively or comparatively.

[fol. 264] (4) *Application to Sub-leases and Open Accounts.*

We need not dwell at length on the contention that the stations operated under a sub-lease or on open account must be omitted from consideration. It is true that the Clayton Act (50) speaks of leases of goods. And it may be conceded that the statute does not apply to leases on real property. And, generally speaking, a sub-lease is not a lease. But, as I stated at the oral argument, the designation which the parties have given to an instrument is not conclusive. We are dealing with an important governmental policy of long duration, established by a statute which became effective on July 2, 1890 (51), and implemented by a subsequent statute, which became effective on October 14, 1914 (52). Our duty is to give effect to it. If the

practices involved in the case are contrary to the provisions of either statute, the character of the instrument in which they are contained is not important. The Sherman Act refers to contracts. (53) The Clayton Act refers to leases, sales or contracts. But, in setting the boundaries of illegality, it speaks of conditions, agreements, or understandings that the lessee or purchaser shall not use or deal in competitive goods, and which may result in the restraints condemned by the statute. (54) The Complaint is drawn under both statutes. Ordinarily, a lease deals with the term, the rent to be paid, and the type of business to be conducted on the premises. But, if, in addition, it says whose goods or products should be handled on the premises, we have a condition, agreement or understanding which has nothing to do with the lease proper, and which is within the scope of our inquiry. And if the exclusive supply undertaking, whether contained in a lease, or lurking behind an open account, has the effect condemned by the statute, it is within its prohibitions. (55)

[fol. 265] (5) *Source of Products.*

For the purpose of distributing the petroleum products, both in bulk and packaged, supplied by the California refineries of Standard, the territory is divided into twenty-three distributive areas. These areas are supplied bulk products by tank cars or tank trucks from various points, which, in turn, are supplied by tanker from the refineries.

Packaged goods are supplied by box cars and package trucks from the various refineries. For this purpose, the territory is divided into four areas. The accessories are supplied from eight accessory warehouses, their location and the dealers they serve being:

San Francisco—serves Central and Northern California; also dealers in Northwestern Nevada; also Lakeview District in Southern Oregon.

Salt Lake City—serves all Utah, Arizona, North of Grand Canyon, Eastern and Northern Nevada and Southeastern Idaho.

Phoenix—confined to the State of Arizona and Needles across the Colorado River in California.

Los Angeles—Southern California and Southern Nevada.

Fresno—within the State of California.

Portland—Oregon, Southern Washington and Southwestern Idaho.

Seattle—Washington only.

Spokane—Eastern Washington and Northern Idaho.

The point is pressed that some of the products, such as gasoline, are supplied to California stations exclusively from California refineries. And it is argued that, so far as [fol. 266] the California stations are concerned, their dealings in gasoline are beyond the purview of interstate commerce.

We are not dealing here with commerce in different articles. We are dealing with contracts and practices which are alleged to be illegal under the Anti-Trust Acts. These contracts, which have been epitomized in the first part of this opinion (56), cover *specifically* all petroleum products and tires, tubes and batteries. They also affect dealings in other accessories. We need not, therefore,—nay, we cannot—make a segregation, so as to exclude any item which may have both state provenance and destination in the Western area. The contract is an entirety and cannot be split. More, under the Clayton Act, if a contract has a tendency to lessen competition substantially, or to create a monopoly, the fact that it may also affect the movement of goods in intrastate commerce does not validate it, if its whole effect is likely to be a lessening of competition or monopoly in a sizeable and measurable segment of interstate commerce. In interpreting statutes of this character, and, generally, any legislation which aims to carry into effect the plenary power of the Congress to regulate commerce, it is accepted constitutional doctrine that the power to control is not destroyed by the mere fact that purely intrastate activities may also be reached by it. (57)

More, as already shown, there is a constant flow in interstate commerce of these products and supplies. (58) The contracts affect, and the transactions under them are in the course of interstate commerce. And the practice must also be considered from the effect on the dealers and the com- [fol. 267] petitive suppliers. If, as to them, it results in an effective lock-out of a considerable supply of goods of interstate source, the contracts which carry the practice into effect are invalid.

V

Conclusion and Findings

(1) *Summary of Conclusions:*

So we come to the end of our discussion. Grant that, on a comparative basis, and in relation to the entire trade in these products in the area, the restraint is not integral. Admit also that control of distribution results in lessening of costs and that its abandonment might increase costs. Despite all this, there confronts us the inescapable fact that such "balanced distribution"—as counsel for the defendants characterize it,—calls for concentration of representation, which, in turn, results in an unreasonable restriction of trade, and a substantial lessening of competition, so far as the 5197 outlets, their independent operators and those who seek to supply them, are concerned. As the restriction corners a market of the value of $68,000,000.00, it is illegal, even considered on a comparative basis. Concede further, that the arrangement was entered into in good faith, with the honest belief that control of distribution and consequent concentration of representation were economically beneficial (58) to the industry and to the public, that they have continued for over fifteen years openly, notoriously and unmolested by the Government, and have been practiced by other major oil companies competing with [fol. 268] Standard, that the number of Standard outlets so controlled may have decreased, and the quantity of products supplied to them may have declined, on a comparative basis. Nevertheless, as I read the latest cases of the Supreme Court, I am compelled to find the practices here involved to be violative of both statutes. For they affect injuriously a sizeable part of interstate commerce, or,—to use the current phrase—"an appreciable segment" of interstate commerce.

(2) *Specific Findings:*

So the facts proved and the legal principles applicable command the following findings:

1. The exclusive supply agreements relate to interstate commerce.

2. They affect, and the transactions under them are in the course of, interstate commerce.

3. The relation established by the agreements between the operators and Standard is not that of employer and employee, but that of independent contractor.

4. The agreements confine the operators of stations to which they apply to dealing in Standard products, and automotive accessories handled or sponsored by them.

5. They lock out dealers from sources of competitive products originating in interstate commerce.

6. They deny to dealers access to such competitive products.

7. They deny to manufacturers or suppliers of such products access to the outlets controlled by the independent contractors who operate the stations.

8. They affect a substantial number of outlets and a sub-
[fol. 269] stantial amount of products, whether considered comparatively or not.

9. They constitute an unreasonable restraint of trade and commerce among the States, under the Sherman Anti-Trust Act. (59)

10. They result in a substantial lessening of competition and tend to create a monopoly in a line of commerce, in contravention of the Clayton Act. (60)

11. They are illegal *in their effect* and should be enjoined.

Judgment will, therefore, be for the plaintiff. The terms of the judgment are contained in an order filed simultaneously.

Dated this 7th day of June, 1948.

Leon R. Yankwich, United States District Judge.

[fol. 270] Notes to Text

1. 15 U. S. C. A., Sec. 1.

2. 15 U. S. C. A., Sec. 14.

3. Walling v. Jacksonville Paper Co., 1943, 317 U. S. 564; United States v. South-Eastern Underwriters Association, 1944, 322 U. S. 546-553; United States v. Frankfort Distilleries, Inc., 1945, 324 U. S. 293, 296-298; United States v. Yellow Cab Co., 1947, 332 U. S. 218, 224-226.

4. United States v. Heating & Piping & Air Conditioning Contractors Ass'n, 1940, D. C. Calif., 33 Fed. Sup. 978; United States v. Food & Grocery Bureau of So. Calif., 1942, D. C. Calif., 43 Fed. Sup. 966; United States v. Food & Grocery Bureau of So. Calif., 1942, D. C. Calif., 43 Fed. Sup. 974; United States v. San Francisco Electrical Contractors Ass'n, 1944, D. C. Calif., 57 Fed. Sup. 57.

5. Pick Manufacturing Co. v. General Motors Corp., 1936, 299 U. S. 3.

6. Pick Manufacturing Co. v. General Motors Corp., supra, at pp. 3-4.

7. Pick Manufacturing Co. v. General Motors Corp., supra, at p. 4. (Emphasis added)

8. Standard Oil Co. v. United States, 1911, 221 U. S. 1, 55-62.

9. United States v. Socony-Vacuum Oil Co., 1940, 310 U. S. 150, 220-225; See, Fashion Originators' Guild v. Federal Trade Commission, 1941, 213 U. S. 457, 468.

10. United States v. Socony-Vacuum Oil Co., supra, at pp. 220-221. (Emphasis added.)

[fol. 271] 11. See, Mandeville Island Farms, Inc. v. American Crystal Sugar Co., 1948, slip decision No. 75, decided on May 10, 1948, pp. 22 et seq.

12. Fashion Originators' Guild v. Federal Trade Commission, 1940, 2 Cir., 114 F(2) 80.

13. Fashion Originators' Guild v. Federal Trade Commission, supra, at pp. 84-85. (Emphasis added)

14. See cases under Notes 8 to 12, inclusive. And see, Restatement of Contracts, Section 516; Wilder Mfg. Co. v. Corn Products Refining Co., 1915, 236 U. S. 165; Federal Trade Commission v. Sinclair Refining Co., 1923, 261 U. S. 463; Twin City Co. v. Harding Glass Co., 1931, 283 U. S. 353; Associated Oil Co. v. Myers, 1933, 217 Cal. 297; General Petroleum Corp. v. Longhead, 1933, 218 Cal. 554; B. S. Pearsall Butter Co. v. Federal Trade Commission, 1933, 7 Cir., 292 Fed. 720; Excelsior Motor Mfg. & Supply Co. v. Sound Equipment, 1934, 7 Cir., 73 F(2) 725.

15. United States v. Yellow Cab Co., 1947, 332 U. S. 218; United States v. National Lead Co., 1947, 332 U. S.

319; International Salt Co., Inc., v. United States, 1947, 332 U. S. 392; United States v. National Lead Co., 1947, 332 U. S. 319; United States v. Line Material Co., 1947, 333 U. S. 287, 308-310; United States v. United States Gypsum Co., 1948, 333 U. S. 364, 388-393. And see, International Machines Corp. v. United States, 1936, 298 U. S. 130, 137-140; Oxford Varnish Corp. v. Ault & Wiborg Corp., 1936, 6 Cir., 83 F(2) 764; Signode Steel Strapping Co. v. Federal [fol. 272] Trade Commission, 1942, 4 Cir., 132 F(2) 48, 52-54.

16. Federal Trade Commission v. Morton Salt Company, 1948, slip decision, No. 464, pp. 7-8.

17. Mandeville Island Farms, Inc. et al., v. American Crystal Sugar Company, 1948, slip decision No. 75, p. 16.

18. Standard Oil Co. v. United States, 1911, 221 U. S. 5, 55-62.

19. 15 U. S. C. A., Sec. 14.

20. Fashion Originators' Guild of America v. Federal Trade Commission, 1941, 312 U. S. 457, 463-466 (Emphasis added); And see, Eastern States Retail Lumber Dealers' Ass'n v. United States, 1914, 234 U. S. 600; Standard Fashion Co. v. Magrane-Houston Co., 1922, 258 U. S. 346, 357; Apex Hosiery Co. v. Leader, 1940, 310 U. S. 469, 489-497.

21. Federal Trade Commission v. Morton Salt Co., supra, Mandeville Island Farms Co. v. American Crystal Sugar Co., supra.

22. Standard Oil Co. v. United States, 1911, 221 U. S. 5.

23. Standard Oil Co. v. United States, supra, at p. 64. And see, Dr. Miles Medical Co. v. Park & Sons Co., 1911, 220 U. S. 373, 406-407; Apex Hosiery Co. v. Leader, 1940, 310 U. S. 469; Boro Hall Corp. v. General Motors, 1942, 2 Cir., 124 F(2) 822; United States v. Aluminum Co. of America, 1945, 2 Cir., 148 F(2) 416, 427-430; United States v. General Motors, 1941, 7 Cir., 121 F(2) 376.

24. Judson L. Thompson Mfg. Co. v. Federal Trade [fol. 273] Commission, 1945, 1 Cir., 150 F(2) 952, 955-958.

25. Wickard v. Filburn, 1942, 317 U. S. 111, 118-125; Federal Trade Commission v. Morton Salt Co., supra, at pp. 7-8; Mandeville Island Farms, Inc. v. American Crystal Sugar Co., supra, at pp. 14-19; compare Standard Fashion

Co. v. Magrane-Houston Co., 1922, 258 U. S. 346, 356-357; Corn Products Refining Co. v. Federal Trade Commission, 1945, 324 U. S. 726, 738.

26. Parker v. Brown, 1943, 317 U. S. 338, 351; United States v. Heating, Piping & Air Conditioning Contractors, 1940, D. C. Calif., 33 Fed. Sup. 978, 979; United States v. San Francisco Electrical Contractors' Ass'n, 1944, 57 Fed. Sup. 57, 60.

27. Standard Oil Co. v. Federal Trade Commission, 1922, 2 Cir., 282 Fed. 81; Federal Trade Commission v. Sinclair Refining Co., 1923, 261 U. S. 463, 474-475; International Shoe Company v. Federal Trade Commission, 1930, 280 U. S. 291, 297-298; United States v. Standard Oil Co. of New Jersey, 1931, D. C. Mo., 47 Fed. (2) 288. United States v. Socony-Vacuum Oil Co., 1940, 310 U. S. 150, 220-221.

28. United States v. Aluminum Company of America, 1945, 2 Cir., 148 F(2) 416, 427.

29. Donovan v. Pennsylvania Co., 1905, 199 U. S. 279, 296-302; (cited with approval in United States v. Yellow Cab Co., 1947, 332 U. S. 218, 229); Pick Mfg. Co. v. General [fol. 274] Motors Corp., 1936, 299 U. S. 3; Pick Mfg. Co. v. General Motors Corp., 1935, 7 Cir., 80 F(2) 641; Boro Hall Corp. v. General Motors Corp., 1942, 2 Cir., 124 F(2) 822; International Salt Co. v. United States, 1947, 330 U. S. 392; United States v. Griffith etc., slip decision No. 64, decided May 3, 1948, p. 7.

30. United States v. Griffith, supra, at page 7.

31. National Labor Relations Board v. Fainblatt, 1939, 306 U. S. 600, 606; and see. Signode Steel Strapping Co. v. Federal Trade Commission, 1942, 4 Cir., 132 (F (2) 48, 54.

32. See cases cited in United States v. Heating, Piping & Air Conditioning Contractors' Ass'n, 1940, D. C. Calif., 33 Fed. Sup. 978, and United States v. San Francisco Electrical Contractors' Ass'n, 1944, D. C. Calif., 57 Fed. Sup. 57.

33. Mandeville Island Farms Co. v. American Crystal Sugar Co., 1948, slip decision, pages 14-15.

34. Local 167 National Brotherhood of Teamsters v. United States, 1934, 291 U. S. 286, 297 (Emphasis added); See, Allen Bradley v. Local Union No. 3, 1945, 325 U. S. 797, 810-811; United Brotherhood of Carpenters v. United States, 1947, 330 U. S. 395.

35. See end of Part I and cases cited in Note 3. See also, United States v. Yellow Cab Co., 1947, 332 U. S. 218, 224-228; McComb v. Herlihy, 1947, 4 Cir., 161 F(2) 568, 570-571; see my opinion in Devine v. Handy, 1948, D. C. Calif., 76 Fed. Sup. ——. And for a comprehensive survey of the recent broadening of the concept of commerce, see, Stern, [fol. 275] The Commerce Clause and The National Economy, 1933-1946, 59 Harvard Law Review, 1946, pp. 645, 883.

36. Associated Press v. United States, 1945, 326 U. S. 1.

37. Associated Press v. United States, supra, pp. 18-19.

38. United States v. Yellow Cab Co., 1947, 332 U. S. 218, 224-228.

39. United States v. Yellow Cab Co., supra, at p. 218.

40. See, Zlinkoff & Barnard: The Supreme Court and a Competitive Economy, 1947, 47 Columbia Law Review, pp. 914, 926-932.

41. Associated Press v. United States, 1945, 326 U. S. 1.

42. Indiana Farmer's Guide Co. v. Prairie Farmer Publishing Co., 1934, 293 U. S. 268.

43. Indiana Farmer's Guide Co. v. Prairie Farmer Publishing Co., supra, at p. 278. And see, United States v. Bausch & Lomb Optical Co., 1944, 321 U. S. 707, 720-724.

44. United States v. Clear Flax Linen Looms, Inc., 1945, D. C. Minn. 63 Fed. Sup. 32.

45. United States v. Yellow Cab Co., 1948, 332 U. S. 218.

[fol. 276] 46. See, Coronado Coal Co. v. United Mine Workers, 1925, 268 U. S. 295, 310; Bedford Cut Stone Co. v. Stone Cutter's Ass'n, 1927, 284 U. S. 37, 49; Local 167 v. United States, 1934, 291 U. S. 293, 297; United States v. Socony-Vacuum Oil Co., 1940, 310 U. S. 150, 212-218; United Brotherhood of Carpenters v. United States, 1947, 330 U. S. 395; and see my opinion in United States v. Heating, Piping & Air Conditioning Contractors' Ass'n, 1940, D. C. Cal., 33 Fed. Sup. 395.

47. Coronado Coal Co. v. United Mine Workers, supra, at p. 310.

48. See Part III, (A) and cases cited in Footnotes 36 to 45.

49. United States v. Trenton Potteries, 1926, 273 U. S. 392, 397. (Emphasis added)

50. 15 U. S. C. A., Sec. 14; Curtis Publishing Co. v. Federal Trade Commission, 1921, 3 Cir., 270 Fed. 881, 906; Associated Oil Co. v. Meyers, 1933, 217 Cal. 297, 304-306.

51. 15 U. S. C. A., Sec. 1.

52. 15 U. S. C. A, Sec. 14.

53. 15 U. S. C. A., Sec. 1.

54. 15 U. S. C. A., Sec. 14.

55. See, United Shoe Machinery So. v. United States, 1922, 258 U. S. 451, 457-458; Standard Fashion Co. v. Magrane-Houston Co., 1922, 258 U. S. 346, 354-355.

[fol. 277] 56. See Part I of Opinion.

57. See Part II-(D), and cases cited in Footnotes 32 to 35. And see, United States v. Wrightwood Dairy Co., 1942, 315 U. S. 110; Illinois Natural Gas Co. v. Central Illinois Public Service Co., 1942, 314 U. S. 498; and see my opinion in Holl v. Southern Pacific Co., 1947, D. C. Calif., 71 Fed. Sup. 21, 23-24.

58. United States v. Trenton Potteries, 1926, 273 U. S. 392, 397; and see cases cited in Footnotes 9 to 13. General statements on discontinuity as an element in fixing the intrastate character of a transaction, such as those quoted and relied on, from Jewel Tea Co. v. Williams, 1941, 10 Cir., 118 F(2) 203, 206-207, are not very helpful. They must be evaluated only in relation to the situation under review in the particular case, and in the light of the later Supreme Court decisions, which have modified greatly the concept they seek to perpetuate. The case in which they are found was decided *in 1941*. In Walling v. Jacksonville Paper Co., 317 U. S. 564, *decided in 1944*, the Supreme Court refused to apply rigidly the formula of pause or stoppage. The Court said:

> "The record reveals, however, that the goods in both of these two categories are ordered pursuant to

a preexisting contract or understanding with the customer. It is not clear whether the decision of the Circuit Court of Appeals includes these two types of transactions in the group of prior orders which it held [fol. 278] were covered by the Act. We think they must be included. Certainly they cannot be distinguished from the special orders which respondent receives from its customers. Here also, *a break in their physical continuity of transit is not controlling. If there is a practical continuity of movement from the manufacturers or suppliers without the state, through respondent's warehouse and on to customers whose prior orders or contracts are being filled, the interstate journey is not ended by reason of a temporary holding of the goods at the warehouse. The fact that respondent may treat the goods as stock in trade or the circumstance that title to the goods passes to respondent on the intermediate delivery does not mean that the interstate journey ends at the warehouse.* The contract or understanding pursuant to which goods are ordered, like a special order, indicates where it was intended that the interstate movement should terminate. Numerous authorities are pressed on us for the contrary view and for the conclusion that when the goods enter the warehouse, they are no longer 'in commerce.' But as we stated in Kirschbaum Co. v. Walling, 316 U. S. 517, 520-521, decisions dealing with various assertions of state or federal power in the commerce filed are not particularly helpful in determining the reach of this Act." (Walling v. Jacksonville Paper Co., supra, at pp. 568-569) (Emphasis added).

And see, Walling v. Mutual Wholesale Foods Supply Co, [fol. 279] 1944, 8 Cir., 141 F(2) 331, 338-340; compare, Clyde v. Broderick, 1944, 10 Cir., 144 F(2) 348, 351, *decided after* the Jacksonville Paper Co. case, and in which *the same court* which decided the Jewel Tea Company case applies a more flexible concept, which accords with the latest rulings of the Supreme Court.

59. See Part II-(D) of opinion, and cases cited in Footnotes 32 to 35.

60. 15 U. S. C. A., Sec. 1.

61. 15 U. S. C. A., Sec. 14.

[fol. 280] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Leon R. Yankwich, Judge

No. 6159-Y

UNITED STATES OF AMERICA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC., Defendants

DECISION AND ORDER—Filed June 7, 1948

The above-entitled cause, heretofore tried, argued and submitted, is now decided as follows:

I

Upon the grounds stated in the Opinion filed herewith, judgment will be for the plaintiff, as follows:

(1) That defendants Standard and Standard Stations, Inc. have entered into contracts which unreasonably restrain interstate trade and commerce in petroleum products and automotive accessories in violation of Section 1 of the Sherman Act.

(2) That Standard and Standard Stations, Inc. have substantially lessened and restrained competition in petroleum products and automotive accessories, in violation of Section 3 of the Clayton Act.

[fol. 281] (3) That the exclusive supply provisions in the written contracts and oral agreements between defendants Standard and Standard Stations, Inc. and Independent Service Station Operators and Garage Operators are in unreasonable restraint of, and substantially lessen competition in, interstate commerce in petroleum products and automotive accessories and in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act.

(4) That defendants Standard and Standard Stations, Inc. and their officers, directors, agents, representatives, and all persons and corporations acting or claiming to act on their behalf be and are hereby perpetually enjoined

from entering into, or enforcing any contract, agreement, or understanding, express or implied, with any Independent Service Station Operator, or Garage Operator, or from inducing or compelling, or attempting to induce or compel, by any means whatever, any Independent Service Station Operator, or Garage Operator, to enter into any contract, agreement, or understanding, which provides:

(a) That the Independent Service Station Operator or Garage Operator shall secure all of his requirements of petroleum products from defendant Standard, or shall not handle the petroleum products of any other company;

(b) That the Independent Service Station Operator, or Garage Operator shall secure all of his requirements of any one or more types of automotive accessories from or through defendants Standard and Standard Stations, Inc., or will not handle accessories competitive with those distributed or sponsored by defendants Standard and Standard Stations, Inc;

(c) That the sale of any petroleum product or automotive accessory to any Independent Service Station [fol. 282] Operator, or Garage Operator shall be conditional on the sale of other petroleum products or automotive accessories.

(4) In order not to deprive the defendants of the benefit of any appeal in the case, the permanent injunction will be stayed until the expiration of six months after the Judgment shall have become final.

II

The Judgment shall be based upon the following findings:

(1) The exclusive supply agreements relate to interstate commerce.

(2) They affect, and the transactions under them are in the course of interstate commerce.

(3) The relation established by the agreements between the operators and Standard is not that of employer and employee, but that of independent contractor.

(4) The agreements confine the operators of stations to which they apply to dealing in Standard products, and automotive accessories handled or sponsored by them.

(5) They lock out dealers from sources of competitive products originating in interstate commerce.

(6) They deny to dealers access to such competitive products.

(7) They deny to manufacturers of suppliers of such products access to the outlets controlled by the independent contractors who operate the stations.

(8) They affect a substantial number of outlets and a substantial amount of products, whether considered comparatively or not.

(9) They constitute an unreasonable restraint of trade and commerce among the States under the Sherman Anti-[fol. 283] Trust Act.

(10) They result in a substantial lessening of competition and tend to create a monopoly in a line of commerce in contravention of the Clayton Act.

(11) They are illegal in their effect and should be enjoined.

Judgment will, therefore, be for the plaintiff.

Findings and Judgment to be prepared by counsel for the plaintiff under Local Rule 7, in accordance herewith.

Dated this 7th day of June, 1948.

(S.) Leon R. Yankwich, U. S. District Judge.

[fol. 284] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF MOTION FOR REOPENING, REARGUMENT AND RECONSIDERATION, AND FOR A DECISION IN FAVOR OF DEFENDANTS—Filed June 16, 1948

To Plaintiff and its Attorneys:

Please take notice that on June 28, 1947, at the hour of 10:00 A. M., or as soon thereafter as defendants' counsel may be heard, defendants will severally move the above entitled Court in the courtroom of the Honorable Leon R. Yankwich, Judge of said Court, in the United States Post Office and Court House Building at Los Angeles, California, to grant the motion which is annexed hereto.

Said motion will be made upon and reference will be made to the records, papers, pleadings and files herein including the reporter's transcript of proceedings at the trial, the exhibits received in evidence, the testimony offered and [fol. 285] rejected, and the opinion and order of the Court filed on June 7, 1948.

Said motion will be made upon the ground that the decision on June 7, 1948 of the United States Supreme Court in *United States v. Columbia Steel Co.* demonstrates that it would be error for this Honorable Court, upon the evidence in this case, to enter a judgment in favor of plaintiff, and that the law as now stated in said Columbia Steel decision, applied to the facts of this case, requires a judgment in favor of defendants.

In support of said motion there is served and filed herewith a printed memorandum entitled "Memorandum Showing that the Decision of the Supreme Court in United States v. Columbia Steel Co., Requires a Decision in Favor of Defendants."

Dated, June 16, 1948.

Lawler, Felix & Hall, Pillsbury, Madison & Sutro, John M. Hall, by John M. Hall, Attorneys for defendants.

[fol. 286] MOTION FOR REARGUMENT AND RECONSIDERATION AND A DECISION IN FAVOR OF DEFENDANTS.

Now come Standard Oil Company of California and Standard Stations, Inc., defendants herein, and severally move the Court:

That the Court reopen this cause and hear further argument upon and reconsider its opinion upon the merits in view of the decision on June 7, 1948 of the United States Supreme Court in *United States v. Columbia Steel Co.* and that upon such further argument and reconsideration the Court revise its opinion and vacate its order of June 7, 1948 and direct that judgment be for defendants and that findings and judgment be prepared accordingly.

[fol. 287] POINTS AND AUTHORITIES

See printed memorandum entitled, "Memorandum Showing That the Decision of the Supreme Court in United States v. Columbia Steel Co. Requires a Decision in Favor of Defendants," served and filed herewith.

There has been no judgment in this case, for the opinion and order of June 7, 1948 do not constitute a judgment; hence the Court retains jurisdiction to reconsider and revise the conclusions heretofore stated.

Continental Nat. Bank v. National City Bank, 69 Fed. (2d) 312, 317 (C. C. A. 9, 1934; cert den. 293 U. S. 557)

G. Amsinck & Co. v. Springfield Grocer Co., 7 Fed. (2d) 855, 858 (C. C. A. 8, 1925)

Marconi Wireless Co. v. United States, 320 U. S. 1, 47 (1943)

[fol. 288] [File endorsement omitted]

[fol. 289] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MEMORANDUM SHOWING THAT THE DECISION OF THE SUPREME COURT IN UNITED STATES V. COLUMBIA STEEL CO. REQUIRES A DECISION IN FAVOR OF DEFENDANTS—Filed June 16, 1948

The opinion of the Honorable Leon R. Yankwich was filed herein on June 7, 1948. On the same day the United

States Supreme Court handed down its decision in *United States* v. *Columbia Steel Co.*, — U. S. —. *This decision is of the utmost importance to our case.*

It is respectfully urged that the majority opinion in the *Columbia Steel* case discloses fundamental error in Judge Yankwich's opinion, and requires a decision in favor of defendants herein.

This memorandum examines the opinion in the *Columbia Steel* case, and, by an application of the same to our case, [fol. 290] demonstrates the error which, it is respectfully contended, underlies Judge Yankwich's opinion.

This memorandum is filed in support of defendants' contention that there should be a reconsideration of Judge Yankwich's opinion and conclusions, and a decision in favor of defendants herein.

Our Case	Columbia Steel Case
Dealers in seven Western states contracted to buy from Standard their resale requirements of petroleum products, and (in some cases) of tires, tubes and batteries.	U. S. Steel Corporation contracted to purchase for $8,250,000 the assets of Consolidated Steel Corporation, the largest *independent* steel fabricator on the West Coast.
There were 5197 of these dealers and their annual purchases from the company are said to aggregate $68,000,000.	U. S. Steel was the country's largest producer of rolled steel products, producing during 1937 to 1941 something like one-third of the country's rolled steel with average annual sales of $1,000,000,000.
	From 1937 to 1946 Consolidated purchased over 2,000,000 tons of rolled steel products, and during 1937 to 1941 had average annual sales of $20,000,000 in eleven Western states.

[Vol. 291] Our Case

The charge was that the contracts violated sec. 1 of the Sherman Act (unreasonably restrained commerce) and sec. 3 of the Clayton Act had the effect of substantially lessening competition or tending to create a monopoly in a line of commerce). *The government's specific contention* was that the contracts were an *illegal restraint because all suppliers, other than Standard, would be excluded from the business of supplying the requirements of these numerous* (though scattered) *dealers.*

[Vol. 292]

The contracts complained of obligated the dealer to buy his requirements at a designated location from Standard and thus, at such locations, other suppliers would (during the life of the con-

Columbia Steel Case

The charge was that this contract violated sec. 1 of the Sherman Act (unreasonably restrained commerce) and sec. 2 of the Sherman Act (was an attempt to monopolize).

The government's specific contention was, as stated in the opinion (1796): "The theory of the United States . . . is that the acquisition of Consolidated constitutes an *illegal restraint* of interstate commerce *because all manufacturers except United States Steel will be excluded from the business of supplying Consolidated's requirements of rolled steel products,* . . ."**

"Whatever amount of rolled steel products Consolidated uses in the future will be supplied insofar as possible from other subsidiaries of United States Steel, and other producers of rolled

*Page references are to the "U. S. Supreme Court Bulletin" print of the opinion published by Commerce Clearing House, Inc.

**Additionally the government contended that existing competition between U. S. Steel and Consolidated would be eliminated, and that the acquisition constituted an attempt by U. S. Steel to monopolize the production and sale of fabricated steel products in the Consolidated market. (1796)

Our Case—Cont.	Columbia Steel Case—Cont.
tracts) *lose the dealers as prospective customers.*	steel products *will lose Consolidated as a prospective customer.*" (1797).
Thus:	Thus:
"Requirements" contracts are complained of because they "shut out" competitors, *i. e.*, dealers having contracted with Standard for their "requirements," competitors of Standard can no longer deal with such dealers. (This is temporary, *i. e.*, lasts for the life of the contracts.)	"Vertical integration" is complained of because it "shuts out" competitors, *i. e.*, Consolidated having been acquired by U. S. Steel, competitors of U. S. Steel can no longer deal with Consolidated. (This is permanent.)
By its complaint, the government selected an area ("Western area," *i. e.*, California, Arizona, Nevada, Oregon, Washington, Idaho and Utah) in which it was alleged that Standard had [fol. 293] violated the law by means of these contracts. However, at the trial, the government contended that the "area" from which competitors were excluded was solely the 5000 or more dealer stations which had "requirements" contracts.	The government contended that "the relevant market to be considered is the eleven-state area in which Consolidated sells its products. . . ." (1798), *i.e.*, the states of Arizona, California, Idaho, Louisiana, Montana, Nevada, New Mexico, Oregon, Texas, Utah and Washington. (1791) The Court adopted this contention. (1800)
Judge Yankwich's opinion concludes that judgment should be for the government.	This decision affirms a judgment (7 F. Supp. 671) against the government.

The following comparison between Judge Yankwich's opinion of June 7, 1948, in our case and the opinion of June 7, 1948, in the *Columbia Steel* case shows that the foundation for the ultimate conclusion stated in Judge Yankwich's opinion is untenable.

Judge Yankwich's Opinion

"Substantiality of restraint or tendency to create monopoly is established by (a) the market foreclosed,—*here represented by the controlled units*,—and (b) *the volume of controlled business, totalling here in value $68,000,000.00.*

[fol. 294] Fractionally speaking, the business done by the competitors with their own outlets or with those under contract is much greater than the business of Standard,—both in volume and in money value. *Nevertheless, the business of Standard is considerable. In effect, it amounts to a substantial lessening of competition and a monopoly of a sizeable segment* of a line of commerce in a definite area—the seven Western states." (43, 44)

Columbia Steel Opinion

"It is argued that without regard to the percentages of consumption of rolled steel products by Consolidated just considered, the acquisition by United States Steel of Consolidated violates the Sherman Act. Such an arrangement, it is claimed, excludes other producers of rolled steel products from the Consolidated market and constitutes an illegal restraint *per se* to which the rule of reason is inapplicable." (1808)

Thus, we see that the gist of Judge Yankwich's opinion in our case adopts the argument government counsel made in the *Columbia Steel* case. Judge Yankwich's opinion is based upon a "*sizeable segment*" theory, *i. e.*, that exclusion of competitors from upwards of 5000 scattered dealers under contract, plus $68,000,000 annual sales to such dealers *are enough without more to spell illegality.* The government, in our case, as well as in the *Columbia Steel* case, relied upon the *Yellow Cab* decision (332 U. S. 218) to support its theory. The opinion in the *Columbia Steel* case definitely points out that the *Yellow Cab* decision does not support the government's theory:

". . . the government concludes that the case [Yellow Cab] stands for the proposition that it is illegal *per se* for a manufacturer to preempt any market for his goods through vertical integration provided that 'an appreciable' amount of interstate commerce is involved. [In a footnote the Court here quotes that part of the Yellow Cab decision quoted and principally relied upon by the government in the case at bar in urging its "segment" theory.]

We do not consider our holding in the Yellow Cab case to make illegal the acquisition by United States Steel of this outlet for its rolled steel *without consideration of its effect on the opportunities of other competitor producers to market their rolled steel.* (1810, 1811).

* * * * * *

[fol. 296] *Nothing in the Yellow Cab case supports the theory that all exclusive dealing arrangements are illegal per se.* (1812)

* * * * * *

Exclusive dealings for rolled steel between Consoli-

dated and United States Steel, brought about by vertical integration or otherwise, are not illegal, *at any rate until the effect of such control is to unreasonably restrict the opportunities of competitors to market their product.* (1813)

In United States v. Paramount Pictures, — U. S. —, we were presented with a situation in which the government charged that vertical integration was illegal under the Sherman Act. *We held that control by the major producer-distributors over nearly three-quarters of the first-run theatres in cities with popu-* [fol. 297] *lation over 100,000 was not of itself illegal,* and we remanded the case to the district court for further findings.

In outlining the factors which we considered to be significant in determining the legality of vertical integration, *we emphasized the importance of characterizing the nature of the market to be served, and the leverage on the market which the particular vertical integration creates or makes possible. A second test which we considered important in the Paramount case was the*

Columbia Steel Opinion —Cont.

purpose or intent with which the combination was conceived." (1813, 1814)

* * * * * *

"*In determining what constitutes unreasonable restraint, we do not think the dollar volume is in itself of compelling significance; we look rather to the percentage of business controlled,* [fol. 298] *the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market.*" (1816, 1817)

Thus, it is made clear that it is not enough to simply point to a large volume of trade from which competitors are alleged to be "shut away" (either by "requirements" contracts, as in our case, or by "vertical integration," as in the *Columbia Steel* cases). The competitive setting in which this occurs must be considered. The "effect on the opportunities of other competitive producers to market" their product must be considered and their "opportunities . . . to market their product" must be observed. The "nature of the market to be served, and the leverage on the market" created by the practices complained of must not be ignored. The "purpose or intent" back of such practices must be ascertained. The "percentage of business controlled, the strength of . . . . competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market" must all be given effect.

[fol. 299] Our case cannot be decided by simply finding that the following factors exist:

(a) Contracts with "requirements" clauses.

(b) 5197 scattered dealers having such contracts.

(c) A yearly volume of $68,000,000 handled by such dealers.

Yet Judge Yankwich's opinion makes it perfectly clear that these factors being present all else is of no significance. True, some evidence of the competitive background in our case was admitted and some of it is referred to in Judge Yankwich's opinion. (35 to 39) But his opinion shows that this counts for nothing; that the three factors mentioned above *are controlling.* Thus, compare what Judge Yankwich says with the opinion in the *Columbia Steel* case:

Judge Yankwich's Opinion.	Columbia Steel Opinion.
"So we come to the end of our discussion. Grant that, on a comparative basis, and in relation to the entire trade in these products in the area, the restraint is not integral. Admit also that control of distribution results in lessening costs and that its abandonment might increase costs. Despite all this, there confronts us the inescapable [fol. 300] fact that such 'balanced distribution'—as counsel for the defendants characterizes it,—calls for concentration of representation, which, in turn, results in an unreasonable restriction of trade, and a substantial lessening of competition, so far as the 5197 outlets, their in-	*"In determining what constitutes unreasonable restraint, we do not think the dollar volume is in itself of compelling significance; we look rather to the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market.* (1816, 1817)

dependent operators and those who seek to supply them, are concerned. *As the restriction corners a market of the value of $68,000,000.00, it is illegal, even considered on a comparative basis.* Concede further, that the arrangement was entered into in good faith, with the honest belief that control of distribution and consequent concentration of representation were economically beneficial to the industry and to the public, that they have continued for over fifteen years openly, notoriously and unmolested by the Government, and [fol. 301] have been practiced by other major oil companies competing with Standard, that the number of Standard outlets so controlled may have decreased, and the quantity of products supplied to them may have declined, on a comparative basis. *Nevertheless, as I read the latest cases of the Supreme Court, I am compelled to find the practices here involved to be violative of both statutes. For they affect injuriously a sizeable part of interstate commerce, or,—to use the current phrase,—'an appreciable segment' of interstate commerce.*" (48, 49)

If the theory announced in Judge Yankwich's opinion is correct, then the decision in the *Columbia Steel* case would have been impossible. In the *Columbia Steel* case, the U. S. Steel Corporation by acquiring Consolidated, *permanently* removed Consolidated as a prospective buyer of rolled steel products from U. S. Steel's competitors. Such competitors were *permanently* prevented from ever selling such products to Consolidated. Over a ten-year period (1937 to 1946) Consolidated had bought 2,000,000 [fol. 302] tons of these products (1798) for its fabricating operations in eleven Western states, amounting to $20,000,000 annually (1937 to 1941). (1790) Certainly this was a "sizeable segment," and much more than an "appreciable segment." Yet the transaction was held to be lawful. It was upheld upon a consideration of the "competitive setting" and other factors, which find their counterpart in our case. For example:

Our Case.	Columbia Steel Case.
In the seven Western states Standard's retail dealer sales of gasoline are 12% to 14% of the total [McClanahan, Tr. 50]; in the Los Angeles Basin area (the largest retail gasoline market in the world) in 1946 they were 2.43% of the total; and in the San Francisco Bay area in 1946 they were 5.52% of the total. [Exs. V and Y.]	In the eleven Western states Consolidated's sales (total bookings) of fabricated structural steel products was 5% of the total during 1937 to 1942, and 11% in 1946. (1801, 1802)
In the seven Western states Standard's dealer sales in 1946 of lubricating oil were 5% of the total; of tires, 2% of the total; and of batteries, 1.8% of the total. [Exs. AA, BB and CC.]	In such area purchases by Consolidated over a ten-year period represented 3% of the demand for rolled steel products. (1816)
There was much uncontradicted evidence showing [fol. 303] that the contracts in question were the outgrowth of the powerful and	The acquisition "seems to reflect *a normal business purpose, rather than a scheme to circumvent the law.*" (1822)

aggressive competition confronting Standard in the Western area. *There was no evidence whatever of any purpose to restrain competition or monopolize or any intent on the part of Standard other than a "normal business purpose."*

There is further error in Judge Yankwich's opinio closed by the opinion in the *Columbia Steel* case.

Judge Yankwich's Opinion.

"The Socony-Vacuum case and other cases which follow it express the view that the economic wisdom or unwisdom, or the economic benefit or detriment, of a restriction on commerce is not material, especially when we are dealing with a practice, such as price fixing, which is illegal *per se*." (13)

. . . . . .

[fol. 304]

"Judge Learned Hand stressed these very points in the Fashion Originators' Guild case. He applied the reasoning of the Socony-Vacuum case to a case not involving price-fixing." (15)

. . . . . .

"At times, courts speak of the 'detriment' to the public

Judge Yankwich's Opinion—Cont.

resulting from a practice. But they do not intend to legalize restraints which may be beneficial to the public." (25)

"The harm to the public is gauged by the effect of the practices on the free flow of goods in interstate commerce and the maintenance of competition in that field. *Consequently, practices which are likely to curtail or affect injuriously a measurable or sizeable part of commerce are prohibited under both Acts.*" (26, 27)

[fol. 305] But this "sizeable part" rule applies only where there is a specific intent to accomplish a forbidden restraint of commerce, or where the practices complained of are restraints which are illegal *per se*.

Columbia Steel Opinion.

"A restraint may be unreasonable either because a restraint otherwise reasonable is accompanied with a specific intent to accomplish a forbidden restraint or because it falls within the class of restraints that are illegal *per se*.

For example, where a complaint charges that the defendants have engaged in price fixing,* or have con-

* Citing *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150.

certedly refused to deal with non-members of an association,** or have licensed a patented device on condition that unpatented materials be employed in conjunction with [fol. 306] the patented device,* *then the amount of commerce involved is immaterial because such restraints are illegal per se.*" (1811, 1812)

* * * * * * *

"*In determining what constitutes unreasonable restraint, we do not think the dollar volume is in itself of compelling significance; we look rather to the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market,*" (1816, 1817.)

Thus it is clear that the cases in which the amount of commerce restrained is immaterial (*i. e.*, where restraint

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** Citing *Associated Press v. United States*, 326 U. S. 1; *Eastern States Retail Lumber Dealers' Association v. United States*, 234 U. S. 600; *W. W. Montague & Co. v. Lowry*, 193 U. S. 38; and *Fashion Originators' Guild v. Federal Trade Commission*, 312 U. S. 457.

* Citing *International Salt Co. v. United States*, 332 U. S. 392.

of only an "appreciable" ** part of interstate commerce is [fol. 307] all that is necessary) are cases in which there was (a) a specific intent to restrain, or (b) in which the practice engaged in is illegal *per se*. Such illegal practice being shown, it is brought within the Act by showing that an "appreciable" amount of interstate commerce is affected. But in our case there was no evidence that Standard had any specific intent to restrain commerce, and the practices complained of (*i. e.*, the contracts) were concededly *not* illegal *per se*. (See Judge Yankwich's opinion, pp. 26, 27, 28).

The *Columbia Steel* case demonstrates the error of applying the "sizeable part" theory to our case. In the *Columbia Steel* case the practice involved ("vertical integration") was not illegal *per se*. In our case the practice complained of ("requirements contracts") is not illegal *per se*. This being true, and there being no showing of a "specific intent to accomplish a forbidden restraint," the *Columbia Steel* case points out (1811) that the *Associated Press* case, the *Fashion Originators' Guild* case, the *International Salt* case, and the *Yellow Cab* case do not warrant an injunction on the theory that the contracts affect a "sizeable part" of interstate commerce; that despite the fact that a "sizeable part" is involved, the case must be decided upon those factors which were so prominently exhibited by the defense in our case, and which have been herein referred to as the "competitive setting."

In our case such "competitive setting" makes an even stronger case for the defendants than in the *Columbia Steel* case. The uncontradicted evidence shows that Standard adopts the policy of contracting with the fewest possible number of dealer outlets consistent with service to the marketing area; that such outlets are not so concentrated [fol. 308] as to even suggest a monopoly of any part of such area; that the number of Standard's dealer outlets has decreased substantially over the last ten years; that such outlets represent a small fraction of the total outlets; that

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** The word "appreciable" is the term used in the Yellow Cab decision: "Hence it is enough if some *appreciable* part of interstate commerce is the subject of a monopoly, a restraint or a conspiracy." (332 U. S. 218, 225)

(Italics in the foregoing memorandum have been added.)

Standard throughout the area has powerful, aggressive, and numerous competitors, a number of whom have dealers exclusively handling their products and have expanded their dealer sales to a far greater degree than Standard; that Standard's dealer sales have not increased in volume out of proportion to the general increase in volume enjoyed by the rest of the industry in the area in question and in certain instances have actually fallen behind industry sales as a whole; that competitors of Standard have suffered no financial detriment from the practices complained of but on the contrary have grown and presumably prospered; and that both the dealers and the motoring public have benefited substantially from the service maintained by Standard as a part of its marketing system which the government seeks to abolish.

Dated, June 16, 1948.

Respectfully submitted, Pillsbury, Madison & Sutro, Lawler, Felix & Hall, Marshall P. Madison, Eugene M. Prince, John M. Hall, Attorneys for Defendants.

[fol. 309] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

RECEIPT—Filed June 16, 1948

(Of Notice of Motion for Reopening, Reargument and Reconsideration and for a Decision in Favor of Defendants and accompanying Memorandum.)

Receipt of a copy of each of the following is hereby acknowledged:

Notice of Motion for Reopening, Reargument and Reconsideration and for a Decision in Favor of Defendants.

Memorandum Showing that the Decision of the Supreme Court in United States v. Columbia Steel

Co. Requires a Decision in Favor of Defendants (printed).

Dated, June 16, 1948.

William C. Dixon, Special Assistant to the Attorney General; W. Alan Thody, Special Assistant to the Attorney General; Lawrence W. Somerville, Special Attorney; Edwin U. Driscoll, Special Attorney. By W. Alan Thody, Attorneys for plaintiff.

[fol. 310] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 6159-Y Civil

UNITED STATES OF AMERICA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC., Defendants

SUPPLEMENTAL OPINION—Filed June 28, 1948

Appearances:

For the Plaintiff: William C. Dixon, Special Assistant to the Attorney General; W. Alan Thody, Special Assistant to the Attorney General; Lawrence W. Somerville, Special Attorney Anti-Trust Division; Tom C. Clark, Attorney General; James M. Carter, United States Attorney.

For the Defendants: Lawler, Felix & Hall, By John M. Hall. Pillsbury, Madison & Sutro, By Everett A. Mathews.

[fol. 311] Yankwich, District Judge:

I

THE MOTION TO RECONSIDER

On the same day on which the opinion in this case was filed, June 7, 1948, the Supreme Court decided United States v. Columbia Steel Company, et al. (1) On June 16, 1948, the defendants in this case filed a notice of motion for "reopening, reargument and reconsideration". This was followed by the motion itself, which, originally noticed for June 28, 1948, was advanced to, and actually made, on June 24, 1948, and submitted. It seeks a decision, findings and judgment in favor of the defendants.

I doubt if a motion of this character, which is akin to the motion for "another and different judgment" under California practice (2), can be entertained in our court, either before or after formal findings and judgment are filed. However, neither in the case in which I expressed such doubt (3), nor in a more recent case in which a similar motion was made (4), did I allow this to stand in the way of determining the motion on the merits. Nor will I do so now. For I grant that a judge may, at any time before finality attaches to his decision, change his views on the law of a case or the conclusions to be reached as to a controversy or a specific phase of it (5). More, it would be the imperative duty of any judge of a lower court to give effect to a decision of the highest court of the land, announced subsequent to, or simultaneously with, his decision; [fol. 312] and which called for a modification of his views. And such action would be obligatory, whether the higher court spoke with unanimity or was divided, or even if the judge agreed with the minority opinion. When such a situation confronted me several years ago, I wrote:

> "I feel compelled by this decision to hold that the new enactment, Chapter 10, of the Bankruptcy Act, in so far as it applies to irrigation districts of the type of the petitioner, is constitutionally vulnerable, as was the old. As a student, exercising private judgment, I agree with the conclusion of the dissenters that immunity from interference through federal bankruptcy laws, even if applicable to states, should not be extended to state instrumentalities, whether they

be municipal, quasi municipal or public corporations. *However, as a judge of a lower court, I cannot exercise private judgment, but must follow the opinion of the majority, which, as I read it, extends the immunity to all governmental agencies created by a state for the performance of public functions.*" (6)

Counsel for the defendants who are, no doubt, familiar with our practice in this respect, have assumed that I would hear the motion on the merits. For, in addition to referring to cases which recognize the right of a court to reconsider its decision (7), they filed simultaneously a twenty-page printed memorandum, the aim of which is to show "that the decision of the Supreme Court in United States v. Columbia Steel Company, requires a decision in [fol. 313] favor of the defendants."

Hence the notice, the brief and the motion itself, which is now before me for decision, all call for a determination of the question propounded by the defendants whether the decision referred to commands a ruling in the present case in favor of the defendants.

II

The Scope of United States v. Columbia Steel Co.

I am of the view that it does not call for a different conclusion than that announced on June 7, 1948. At the outset, I advert to the fact that the range of the ruling I made is not to be determined by the arguments which the Government advanced, *but by what was actually decided.* The fact that in the *Columbia Steel Company* case the Government may have made arguments similar to those made in this case loses all significance, if, *in fact*, my ruling was contrary to the contention. To illustrate: The Government, in the present case, contended that the exclusive supply provision in the Standard contracts was illegal *per se*. I declined to so hold. On the contrary, I ruled that it was illegal *only if it resulted in an unreasonable restraint under the Sherman Act or in substantial lessening of* competition under the Clayton Act. (8) I wrote:

"As I understand the pleadings, and the Government's position at the beginning of the trial, a judgment is sought decreeing that the clause in the con-

facts which, by its language and actual effect, as [fol. 314] shown by the evidence, restricts the stations not employe-operated to the sale and use of petroleum products and accessories produced or supplied by Standard is illegal *per se*. We cannot agree. To the contrary, as we read the cases, exclusiveness of outlet is not, in itself, illegal. It becomes illegal only if it result in a substantial lessening of competition or the creation of monopoly in the line of commerce." (9)

The Supreme Court in the Columbia Steel Co. case, interprets its own prior decisions, and especially the Yellow Cab decision (10), in the same manner. Mr. Justice Reed, after referring to the Government's contention that such contracts are illegal *per se*, says:

> "We do not construe our holding in the Yellow Cab case to make illegal the acquisition by United States Steel of this outlet for its rolled steel without consideration of its effect on the opportunities of other competitor producers to market their rilled steel. In discussing the charge in the Yellow Cab case, we said that the fact that the conspirators were integrated did not insulate them from the act, not that corporate integration violated the act. In the complaint the government charged that the defendants had combined and conspired to effect the restraints in question with the intent and purpose of monopolizing the cab business in certain cities, and on motion to dismiss that allegation was accepted as true. Where a complaint [fol. 315] charges such an unreasonable restraint as the facts of the Yellow Cab case show, the amount of interstate trade affected is immaterial in determining whether a violation of the Sherman Act has been charged." (11)

And even the adoption of the Government's contention by a lower court in one case and its rejection in another by a higher court does not, *necessarily*, mean that *the facts in both cases call for the same decision.*

III

The Grounds of the Columbia Steel Co. Decision.

Unlike the present case which charged violation of *both* the Sherman and Clayton Acts, the Columbia Steel Co.

case charged violation of Sections 1 and 2 of the Sherman Act only. The narrow scope of the inquiry in that case appears from this brief statement of the issues with which the opinion begins:

> "The United States brings this suit under Sec. 4 of the Sherman Act to enjoin United States Steel Corporation and its subsidiaries from purchasing the assets of the largest independent steel fabricator on the West Coast on the ground that such acquisition would violate Sections 1 and 2 of the Sherman Act. The Complaint, filed on February 24, 1947, charged that if the contract of sale between United States Steel and Consolidated Steel Corporation were carried out, competition in the sale of rolled steel products and in fabricated steel products would be restrained, and that [fol. 316] the contract indicated an effort on the part of United States Steel to attempt to monopolize the market in fabricated steel products. After a trial before a single judge in the district court, judgment was entered in favor of the defendants, and the government brought the case here by direct appeal. 32 Stat. 823, 15 U. S. C., Sec. 29." (12)

The position of the Government in the case was weakened by the fact that on June 17, 1946, the Attorney General of the United States had approved the sale by the War Assets Administration to the United States Steel Corporation, one of the defendants, of the plant which the Government had constructed, during the war, at Geneva, Utah. The negotiations for the sale of the Consolidated plant began prior to that sale. And the purpose of the Consolidated purchase was, as stated in the opinion, with evident approval:

> "to assure a market for plates and shapes produced at Geneva, and Roach testified that Consolidated's purpose was to withdraw the stockholders' equity from the fabrication business with it- cyclical fluctuations at a time when a favorable price could be realized." (13)

In effect, the court rules that Consolidated's acquisition would not have any great effect on the market, in view of the fact that its requirements are "an insignificant fraction of the total market,—less than ½ of 1%." (14)

The court was also unable to foresee the probability of the continuance of even that limited market if the sale is [fol. 317] not completed. Mr. Justice Reed said:

> "Whether we accept the government's or Consolidated's figures, however, they are of little value in determining the extent to which West Coast fabricators will purchase rolled steel products in the eastern market in the future since the construction of new plants at Geneva and Fontana and the creation of new basing points on the West Coast presumably give West Coast rolled steel producers a far larger share of the West Coast fabricating market than before the war." (15)

And, finally, the court stressed the fact that the future dealings between Consolidated and United States Steel would be mere incidents of ownership, not illegal *per se*, and would not transgress the provisions of the Sherman Act. As Mr. Justice Reed put it:

> "A subsidiary will in all probability deal only with its parent for goods the parent can furnish. *That fact, however, does not make the acquisition invalid.* When other elements of Sherman Act violations are present, the fact of corporate relationship is material and can be considered in the determination of whether restraint or attempt to restrain exists. That this is the teaching of the Yellow Cab case is indicated by the following quotation:
>
> 'And so in this case, the common ownership and control of the various corporate appellees are impotent to liberate the alleged combination and conspiracy [fol. 318] from the impact of the act. The complaint charges that the restraint of interstate trade was not only effected by the combination of the appellees but was the primary object of the combination. The theory of the complaint, to borrow language from United States v. Reading Co., 253 U. S. 26, 57, is that "dominating power" over the cab operating companies "was not obtained by normal expansion to meet the demands of a business growing as a result of superior and enterprising management, but by deliberate, calculated purchase for control". If that theory is borne out in this case by the evidence, coupled with proof of an

undue restraint of interstate trade, a plain violation of the Act has occurred." That view is in accord with previous decisions of the Court.

"The legality of the acquisition by United States Steel of a market outlet for its rolled steel through the purchase of the manufacturing facilities of Consolidated depends not merely upon the fact of that acquired control but also upon many other factors. Exclusive dealings for rolled steel between Consolidated and United States Steel, brought about by vertical integration or otherwise, are not illegal at any rate until the effect of such control is to unreasonably restrict the opportunities of competitors to market their product." (16)

The position of the Court was summed up in this language:

"We conclude that the so-called vertical integration resulting from the acquisition of Consolidated *does not* [fol. 319] *unreasonably restrict the opportunities of the competitor producers of rolled steel to market their product.* We accept as the relevant competitive market the total demand for rolled steel products in the eleven-state area; over the past ten years Consolidated has accounted for only 3% of that demand, and if expectations as to the development of the western steel industry are realized, Consolidated's proportion may be expected to be lower than that figure in the future. *Nor can we find a specific intent* in the present case to accomplish an unreasonable restraint, for reasons which we discuss under heading III of this opinion." (17)

So, on the whole, it is evident that the decision in Columbia Steel Co. case cannot be given the broad scope which the defendants claim for it. *It is canalized in the narrow channel which the facts in the case established.* The court did not have before it any established facts from which to determine the effect which such acquisition might have on future dealings with the acquired company in certain steel products. And there being no probability of restraining effect on interstate commerce, the court found no violation of the Sherman Act.

The minority opinion lends support to this view of the case. The majority declined to see violation in size resulting from permissible concentration of ownership. They required deleterious effects on commerce, in addition, before refusing sanction to the purchase. These they could not find or foresee. The minority, on the contrary, would [fol. 320] have found violation in mere bigness. (18)

In the present case, as appears from the original opinion, we are dealing *not with probabilities but with actualities.* It was proved at the trial that the challenged practices have, *in fact,* already resulted in denying to the independent operators of stations *which are not owned by the defendants,* free dealing in certain commodities in interstate commerce and locking out Standard's competitors from these outlets. And, as there are no rights incident to ownership, of the type involved in the contemplated purchase of Consolidated Steel, the conclusions already announced must stand. The motion is denied.

Dated this 28th day of June, 1948.

Leon R. Yankwich, U. S. District Judge.

[fol. 321] Notes to Text

1. United States v. Columbia Steel Company, et al, No. 461, October Term.

2. California Code of Civil Procedure, Sec. 663.

3. Brooks Bros. v. Brooks Clothing Co. of California, 1945, D. C. Calif., 5 F. R. D. 14.

4. Blanchard v. Pinkerton, No. 7738, an opinion which was filed on May 13, 1948, but which has not yet been published.

5. See, G. Amsinck & Co., Inc. v. Springfield Grocer Co., 1925, 8 Cir., 7 F(2) 855, 857-858; Continental National Bank v. National City Bank, 1934, 9 Cir., 69 F(2) 312, 317-318. While the cases just cited arose prior to the effective date of the Federal Rules of Civil Procedure, the right of a court to change its conclusions before final judgment is recognized in cases decided since the rules went into effect. See, Marconi Wireless Co. v. United States, 1943, 320 U. S. 47, 48.

6. In re Lindsay-Strathmore Irrigation District, 1937, D. C. Calif. 21 Fed. Supp. 129, 135. Emphasis added.

7. See cases in Footnote No. 5.

8. See Opinion pages 11-27.

9. See Opinion pages 27-28.

10. United States v. Yellow Cab Co., 1947, 332 U. S. 218.

11. United States v. Columbia Steel Co., et al, slip decision pp. 24-25. It is to be observed that Mr. Justice Reed in [fol. 322] Footnote No. 17 of the Opinion quoted a portion of the Yellow Cab opinion which laid great stress on the effect of a restraint on commerce in a given area, and which adopted the language in Indiana Farmers Guide Co. v. Prairie Farmer Co., 1934, 293 U. S. 268, 279, which I stressed in the opinion. (See pages 44-45 of my opinion)

12. Slip decision, United States v. Columbia Steel Co., page 1.

13. Slip decision, page 10.

14. Slip decision, page 11.

15. Slip decision, page 13.

16. Slip decision, pages 26-27. Emphasis added.

17. Slip decision, page 30. Emphasis added.

18. The gist of the dissent is contained in this forceful statement:

> "We have here the problem of bigness. Its lesson should by now have been burned into our memory by Brandeis. *The Curse of Bigness* shows how size can become a menace—both industrial and social. It can be an industrial menace because it creates gross inequalities against existing or putative competitors. It can be a social menace—because of its control of prices. Control of prices in the steel industry is powerful leverage on our economy. For the price of steel determines the price of hundreds of other articles. Our price level determines in large measure whether we [fol. 323] have prosperity or depression—an economy of abundance or scarcity. Size in steel should therefore be jealously watched. In final analysis, size in steel is the measure of the power of a handful of men over our economy. That power can be utilized with light-

ning speed. It can be benign or it can be dangerous. The philosophy of the Sherman Act is that it should not exist. For all power tends to develop into a government in itself. Power that controls the economy should be in the hands of elected representatives of the people, not in the hands of an industrial oligarchy. Industrial power should be decentralized. It should be scattered into many hands so that the fortunes of the people will not be dependent on the whim or caprice, the political prejudices, the emotional stability of a few self-appointed men. The fact that they are not vicious men but respectable and social minded is irrelevant. That is the philosophy and the command of the Sherman Act. It is founded on a theory of hostility to the concentration in private hands of power so great that only a government of the people should have it."

[fol. 324] Clearly, the minority, led by Mr. Justice Douglas, would stop large concentrations of ownership because they see in them the possibility of harm to the national economy through price-control and other harmful restrictions to freedom of commerce. The majority, led by Mr. Justice Reed, do not see in consolidation of economic power the unreasonable restraint condemned by the Sherman Act. (15 U.S.C.A., Secs. 1 and 2). To them, that Act does not denounce *bigness per se*, but only such control, large or small, as results, in fact, in the restrictive or monopolistic evils at which the anti trust law is aimed.

Here, as is obvious from this and the original opinion, the injurious effect on interstate commerce of the restrictions has been shown to exist. More, the present action charges also violation of the Clayton Act (15 U. S. C. A. 14) which aims to stop monopolistic practices in their inception. Under it, a violation can be found if the practices *tend* to achieve the harm condemned by the statute, although such result has not yet been attained.

[fol. 325] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Leon R. Yankwich, Judge.

No. 6159-Y

UNITED STATES OF AMERICA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC., Defendants

ORDER—Filed June 28, 1948

The motion of the defendants for reopening, reargument and reconsideration of the above cause and for a decision in favor of the defendants, heretofore made and submitted on June 24, 1948, pursuant to notice filed on June 16, 1948, is hereby decided as follows:

I

Upon the grounds stated in the supplemental opinion filed herewith, the said motion is hereby denied.

Dated this 28th day of June, 1948.

Leon R. Yankwich, U. S. District Judge.

Counsel notified.

[fol. 326] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

Findings of Fact and Conclusions of Law—Filed June 30, 1948

FINDINGS OF FACT

1. This is a suit in equity by the United States to enjoin certain practices engaged in by the defendants alleged to be in violation of Section 1 of the Sherman Antitrust Act (26 Stat. 209 (1890). 15 U. S. C., Sec. 1) and Section 3 of

the Clayton Act (38 Stat. 731, 15 U. S. C. 14. The Court has jurisdiction of the subject matter and the parties. The defendants Standard Oil Company of California, hereinafter called "Standard," and Standard Stations, Inc., hereinafter called "Standard Stations," have offices, transact business, and are found within the Central Division of the Southern District of California.

2. Defendant Standard is a corporation organized and existing under the laws of the State of Delaware. Standard is engaged in the business of producing and refining petroleum products in the State of California, and of transporting, marketing, and distributing such products in the States of [fol. 327] California, Oregon, Washington, Idaho, Nevada, Utah and Arizona. Said states will hereinafter be collectively referred to as the Western area.

3. Defendant Standard Stations is a corporation organized under the laws of the State of Delaware, and is a wholly-owned subsidiary of Standard. It is engaged in the business of managing and operating service stations throughout the Western area for Standard.

4. Defendants Standard and Standard Stations have for many years past and are at the present time leasing, taking title to, and entering into contractual relationships with operators of service station sites for retail outlets within the Western area.

5. Definitions of terms.

A. The term "retail outlet," as used herein, refers to a service station or garage at which petroleum products and/or "automotive accessories" manufactured or "sponsored by" defendants Standard and Standard Stations are sold or distributed to the motoring public by an "independent dealer."

B. The term "independent dealer," as used herein, refers to the operator of a "retail outlet" who operates said retail outlet as an independent business enterprise and not as an employee or agent of defendants Standard or Standard Stations.

C. The term "petroleum products," as used herein, refers to those products obtained or manufactured from natural gases or crude oil by various processes and sold

or used as a fuel or lubricant for automotive vehicles, together with miscellaneous oils and compounds derived from natural gases or crude oil, and designated for various specific uses and includes such petroleum products as are manufactured or "sponsored by" defendants and sold by defendants "Standard" or "Standard Stations" at any retail outlet operated by said defendants or either of them.

D. The term "automotive accessories," as used herein, refers to replacement parts and articles other than "petroleum products" used on or in the servicing or [fol. 328] repairing of automotive vehicles and includes tires, tubes, batteries, spark plugs, oil filters, oil filter cartridges, fan belts, battery cables, auto lamp bulbs, fuses, windshield wipers and blades, tire repair and vulcanizing kits, anti-freeze preparations, tire chains, waxes and polishes and other like items and includes such "automotive accessories" as are manufactured or "sponsored by" defendants and sold by defendants "Standard" or "Standard Stations" at any retail outlet operated by said defendants or either of them.

E. The term "sponsored by," as used herein, refers to petroleum products and/or "automotive accessories" which are not manufactured or produced by defendants Standard and/or "Standard Stations."

6. In or about the year 1926 defendant Standard began to acquire service station sites or "retail outlets" by means of leases or subleases. In or about the year 1927 Standard commenced to sublease certain of said "retail outlets" to "independent dealers." The said subleases required the "independent dealer" to sell only the products of defendant Standard on the leased premises. This method of acquiring control of "retail outlets" for the purpose of distributing and selling its products to the motoring public was termed the "lease and license system." Approximately 1,800 to 2,000 retail outlets were selling Standard's products under this method of distribution by the late 1920's.

7. Beginning in or about 1931 and until approximately the year 1938, the "lease and agency" system was used as a means of distributing Standard's products. During this period lease and agency agreements were executed and

agency agreements without leases were employed. In numerous instances said lease and agency agreements provided that the agent handle only such gasoline, lubricating oils and other petroleum products as were manufactured or sold by defendant Standard.

[fol. 329] 8. Beginning about the year 1934 a form of agreement entitled "Distributor's Agreement," substantially similar to Plaintiff's Exhibit No. 2, was used by defendants as an additional method of distributing Standard's products through "independent dealers." Under such agreement, the "independent dealer" was required to acquire or purchase his total requirements of "petroleum products" and tires, tubes and batteries, which he sold or acquired for sale at the retail outlet operated by such dealer, from or through defendant Standard. Said written agreement also provided for the acquisition by said dealer from Standard of miscellaneous "automotive accessories."

9. In or about the year 1938 Standard superseded the agency agreements by "Dealer Agreements" substantially similar in form and content to Plaintiff's Exhibit No. 1, hereinafter more fully described in Paragraph 11. In 1944 Standard instituted and put into use within the Western area a form of agreement entitled "Petroleum Products and Equipment Agreement" (Plaintiff's Exhibit No. 3), hereinafter more fully described in Paragraph 13. At about the same time, Standard also instituted and put into use within the Western area a form of agreement entitled "Dealer Agreement TBA" (Plaintiff's Exhibit No. 4). The "Dealer Agreements TBA" have gradually replaced and superseded the Distributor Agreements (Plaintiff's Exhibit No. 2) being used when the latter form of agreement (Plaintiff's Exhibit No. 2) expired. Both the Dealer Agreement TBA form and the Distributor Agreement form contain comparable provisions relating to the purchase from the defendants by an "independent dealer" of his requirements of "petroleum products," tires, tubes, batteries, and miscellaneous "automotive accessories."

10. The relationship between defendants Standard and Standard Stations to an "independent dealer" is governed by five types of written agreements (Plaintiff's Exhibit No. 6) at the present time. Such agreements are designated (1) Dealer Agreements (Plaintiff's Exhibit No. 1); (2)

Distributor Agreements (Plaintiff's Exhibit No. 2); (3) Petroleum Products and Equipment Agreement (Plaintiff's Exhibit No. 3); (4) Dealer Agreement TBA (Plaintiff's Exhibit No. 4); (5) Sublease (Plaintiff's Exhibit No. 5). [fol. 330] 11. The "Dealer Agreement" (Plaintiff's Exhibit No. 1) contains the following clauses:

"1. Standard Oil Company of California, a corporation, hereinafter called 'Company,' agrees to sell to , hereinafter called 'Dealer,' and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealers at . The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity."

* * *

"7. In the performance of this agreement Dealer is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his conduct in the performance of this agreement. Company reserves no right to exercise any control over any of Dealer's employees and all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement."

* * *

"9. This agreement shall not be assignable without the prior written consent of the Company. The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default or the waiver of the default of any other provision hereof. [fol. 331] This agreement shall, as of the commencement date hereof, terminate all prior Dealer Agreements and Agency Agreements between Dealer and Company respecting the premises covered by this agreement."

12. The "Distributor Agreement" (Plaintiff's Exhibit No. 2) contains the following clauses:

Quantity

"Company agrees to sell to Distributor, and Distributor agrees to buy from Company and stock and offer for sale all of Distributor's requirements of petroleum products used or sold or bought to be used or sold by Distributor in the conduct of his business on the premises hereinafter described. The petroleum products to meet Distributor's requirements hereunder shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by Standard Stations, Inc. in Distributor's vicinity, and Distributor agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station."

Other Merchandise

"Company agrees to sell or consign to Distributor and Distributor agrees to purchase or receive from Company, and stock and offer for sale, all of Distributor's requirements of tires, tubes, and batteries used or sold or bought to be used or sold by Distributor on the premises above described. The tires, tubes and batteries to be supplied Distributor hereunder shall be Company's regular line of Atlas Tires, Atlas Tubes, and Atlas Batteries currently sold at service stations operated by Company in Distributor's vicinity. Company will deliver to Distributor such other Atlas merchandise currently sold by Company at service stations

[fol. 332] operated by Standard Stations, Inc., that Distributor wishes to handle hereunder, in quantities necessary in opinion of Company to meet the station's trade requirements. Whether tires, tubes, batteries and other non-petroleum merchandise which Distributor handles hereunder shall be consigned or sold to Distributor shall depend on Company's current policies, but Company will allow Distributor the commissions or the equivalent thereof in differentials below Company's selling price therefor, as set forth in the attached schedule marked schedule 'A' and hereby made a part hereof. This schedule may be modified from time to time by Company. All tires, tubes, and batteries sold or consigned to Distributor hereunder shall be sold by Distributor at not less than Company's authorized prices therefor. All expenses of the storage, handling, sale and distribution at or from the station of products and merchandise consigned or sold to Distributor under the terms of this or any other paragraph hereof shall be paid by Distributor. The proceeds of the sale of consigned merchandise shall be held by Distributor as Trustee for Company and paid over to Company on demand."

* * * *

Conduct of Distributor's Business

". . . It is understood and agreed that Distributor in the performance of this agreement is engaged in an independent business, and nothing herein contained shall be construed as reserving to Company any right to control Distributor with respect to his physical conduct in the performance of this agreement. It is further understood and agreed that Company reserves no right to exercise any control over any of Distributor's employees and that all employees of the Distributor shall be entirely under the control and direction of Distributor. Distributor undertakes and agrees that he will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Com- [fol. 333] pensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satis-

factory evidence of the maintenance of such insurance. Distributor accepts exclusive liability for all contributions and payroll taxes required under the Federal Social Security Act and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement."

Breach of Contract

"In the event Distributor shall fail to perform or fulfill any obligation imposed on Distributor hereiin, Company at its option may terminate this contract forthwith. The waiver by Company of any breach of any provision hereof by Distributor shall not be deemed to be a waiver of the breach of any other provision or provisions hereof, or of any subsequent or continuing breach of such provision or provisions."

13. The "Petroleum Products and Equipment Agreements," (Plaintiff's Exhibit No. 3) contain the following clauses:

"1. Standard Oil Company of California, a corporation, hereinafter called 'Company,' agrees to sell to

hereinafter called 'Dealer,' and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at

The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity.

. . . .

[fol. 334] "7. In the performance of this agreement Dealer is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his conduct in the performance of this agreement. Company reserves no right to exercise any control over any of Dealer's employees and all employees of the Dealer

shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement."

* * *

"9. This agreement shall not be assignable without the prior written consent of the Company. The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default or the waiver of the default of any other provision hereof. This agreement shall, as of the commencement date hereof, terminate all prior Dealer Agreements between Dealer and Company or Subleases from Company to Dealer respecting the premises covered by this agreement."

14. The agreement entitled "Dealer Agreement TBA" (Plaintiff's Exhibit No. 4) contains the following clauses:

"1. Standard Oil Company of California, hereinafter called 'Company' agrees to sell to
hereinafter called 'Dealer,' and Dealer agrees to buy from Company, all Dealer's re- [Fol. 335] quirements of petroleum products used, sold, or bought to be used or sold, by Dealer at
, hereinafter called 'said premises.' The petroleum products to meet Dealer's requirements hereunder shall be those brands of such products generally sold by Company to its Dealers.

"2. Company agrees to sell or consign to Dealer and Dealer agrees to purchase or receive from Company,

and stock and offer for sale, all Dealer's requirements of tires, tubes, and batteries used or sold or bought to be used or sold by Dealer on said premises. The tires, tubes and batteries to be supplied Dealer hereunder shall be those lines supplied by Company from time to time to its dealers generally. Company will deliver to Dealer such other merchandise currently sold by Company that Dealer wishes to handle hereunder, in quantities necessary in opinion of Company to meet Dealer's requirements at said premises. Whether tires, tubes, batteries and other non-petroleum merchandise which Dealer handles hereunder shall be consigned or sold to Dealer shall depend on Company's current policies but Company will allow Dealer the commissions, or the equivalent thereof in differentials below Company's selling price therefor, as set forth in the attached Schedule 'A'. Company may modify this schedule from time to time. All tires, tubes, and batteries sold or consigned to Dealer hereunder shall be sold by Dealer at not less than Company's authorized retail prices therefor. The proceeds of the sale of consigned merchandise shall be held by Dealer as trustee for Company and paid over to Company upon demand. Dealer shall be responsible for all loss of, or damage to, consigned goods belonging to Company in Dealer's possession.

"3. All expenses of the storage, handling, sale and distribution at said premises of products and merchandise consigned or sold to Dealer under this agreement shall be paid by Dealer."

* * *

[fol. 336] "10. Dealer is engaged in an independent business and nothing herein shall be construed as reserving to Company any right to control Dealer's conduct in the performance of this agreement. Company reserves no right to control Dealer's employees, all of whom shall be entirely under Dealer's control and direction and he shall be responsible for their actions and omissions. Dealer shall, at his own expense, during the term hereof, maintain full insurance under applicable Workmen's Compensation Laws covering all persons

employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer shall pay and bear all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

"11. Dealer shall protect, defend, and hold Company harmless from and against all liability for damage to property (including Dealer's property) or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees on, or in connection with the operation of, said premises."

* * *

"13. This agreement shall not be assigned without the prior written consent of Company. The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default or the waiver of any other default hereunder. This agreement shall, as of the commencement date hereof, terminate all prior Dealer Agreements, Distributor Agreements, and Agency Agreements between Dealer and Company respecting said premises."

15. The agreement entitled "Sublease" (Plaintiff's Exhibit No. 5) contains the following clause:

[fol. 337] "4. Lessee shall handle and sell on the leased premises only such petroleum products as are sold Lessee by Lessor, and Lessee agrees not to store, handle, sell, or distribute on or from said premises any petroleum products of any description other than those petroleum products sold to Lessee by Lessor. The price payable by Lessee to Lessor for said petroleum products shall be Lessor's posted price for the same or similar products to it's Dealers generally in Lessee's vicinity at time and place of delivery."

16. As of March 12, 1947 there were 7,145 written agreements of the types described in paragraphs 11-15 herein, in full force and effect in the seven states of the Western area as follows:

Type of Agreement	Calif.	Ariz.	Nev.	Ore.	Wash.	Ida.	Utah	Total
Dealer Agreement	695	81	50	354	356	73	47	1656
Distributor Agreement	255	36	24	96	97	33	15	556
Petroleum Products and Equipment Agreement	495	195	12	92	147	31	30	912
Dealer Agreement TBA	943	160	37	293	474	166	148	2221
Sublease	678	82	42	322	435	116	125	1800*
							Total	7145

*1798 of such sublease agreements are used in conjunction with other types of the aforementioned agreements.

17. As of March 12, 1947, in addition to the aforesaid 7,145 written agreements, defendants Standard and Standard Stations had oral agreements with 742 "independent dealers" pursuant to which the dealer agreed to handle and sell only the gasoline acquired from or sold to him by defendant Standard. Such "independent dealers" are sold as "open accounts" by the defendants.

17(a) The 742 oral agreements of the type described in Paragraph 17 herein applied to 742 retail outlets located in the seven States of the Western area, as follows:

[fol. 338]

California	Arizona	Nevada	Oregon	Washington	Idaho	Utah	Total
429	50	22	77	124	19	21	742

18. As of March 12, 1947, in addition to the aforesaid 7,145 written agreements and the 742 oral agreements described in Paragraph 17, defendants had entered into various other oral agreements, the exact number of which is unknown, with some of the independent dealers with whom the defendants had executed "Dealer Agreements" TBA and "Distributor Agreements" (Plaintiff's Exhibits No. 4 and No. 2). Said oral agreements provided that "the independent dealer" should acquire such "automotive accessories," other than tires, tubes and batteries as he might require for use or sale at the "retail outlet" operated by him from the defendants Standard and Standard Stations provided and as long as said defendants were able to furnish said accessories.

19. As of March 12, 1947 there were 5,937 retail outlets operated by "independent dealers," located in the seven states of the Western area which were subject to either the written or oral agreements referred to in Paragraphs 11-15, and 17. The number of "retail outlets" operating under

various written and oral agreements in seven Western tes as of March 12, 1947 was as follows:

Retail outlets operating under written agreements described in paragraphs 11-15 herein	5,195
Retail outlets operating under oral agreements described in paragraph 17	742
Total	5,937

20. The total quantity and approximate dollar volume of siness done between the defendants and the "independent alers" under the 7,887 written and oral agreements at 5,937 "retail outlets" referred to in Paragraphs 17 and herein for the years 1946 and 1947 was as follows:

1946—Approximate Dollar Volume:

Gasoline	$48,342,374.62
Lubricating Oils	3,246,263.83
Tires and tubes	2,692,094.00
Batteries	352,464.00
Miscellaneous Accessories	687,557.00
	$55,320,753.45

[fol. 339] *1946—Quantity Volume:*

Gasoline	268,568,748 gals.
Lubricating oils	6,067,782 gals.
Tires	179,462 units
Tubes	138,174 units
Batteries	43,078 units
Miscellaneous Accessories	2,375,162 units

1947—Approximate Dollar Volume:

Gasoline	$57,646,323.00
Lubricating oils	3,353,490.21
Tires and tubes	3,188,361.00
Batteries	669,829.00
Miscellaneous Accessories	988,469.00
Total	$65,846,412.21

1947 – Quantity Volume:

Gasoline	320,257,350 gals.
Lubricating oils	6,268,206 gals.
Tires	213,304 units
Tubes	197,400 units
Batteries	63,126 units
Miscellaneous Accessories	2,526,114 units

21. The relationship established by the written and oral contracts and agreements described in Paragraphs 11-15, and 17 between the "independent dealers" and defendants is not that of employer and employee but that of independent contractor.

22. Defendants Standard and Standard Stations have persuaded, induced, and influenced "independent dealers" to enter into the various written and oral agreements described in Paragraphs 11-15, 17, and 18 herein by various means and methods, such as (a) lending money without interest or at rates below current interest rates; (b) by making loans, portions of which were later forgiven; (c) by making gifts of money; (d) by buying equipment from the independent dealer and thereafter furnishing new equipment to said dealer without charge, or by (e) selling equip-
[fol. 340] ment to said dealer at less than cost. In many instances such action was taken by the defendants for the purpose of displacing competitive products then being handled by said "independent dealer" at the retail outlet or for the purpose of precluding the acquisition of such outlet by a competitor of defendants. Standard Stations has negotiated and is a party to many of the agreements described in Paragraphs 11-15 for and on behalf of defendant Standard.

23. The written agreements described in Paragraphs 11 to 15 inclusive in effect as of March 12, 1947 in the seven states of the Western area were executed and approved in the offices of defendants at San Francisco, California. The written and oral agreements contemplate the movement and distribution of goods originating in interstate commerce. There is a constant flow in interstate commerce of the products produced and distributed by defendants. The transactions under the agreements are in the course of interstate commerce; directly affect the "independent

dealer"; prevent him from dealing with competitive suppliers, and directly affect the shipment of competitive goods originating in interstate sources.

24. Defendants distribute and sell, or arrange for the distribution and sale, of "petroleum products" and "automotive accessories" to "retail outlets" in the seven states of the Western area. Standard owns and operates refineries located in the State of California at Richmond, El Segundo and Segura. "Petroleum products" produced or processed thereat are sold and or distributed to "retail outlets" throughout the seven states of the Western area. Gasoline is also purchased or otherwise acquired by Standard from the Utah Oil Refining Company located at Salt Lake City, Utah, for sale and distribution to "independent dealers" located in part of Utah and Southeastern Idaho. Quantities of gasoline are also purchased or acquired by defendants from the Standard Oil Company of Texas and shipped and distributed from said state by Standard to "independent dealers" located in the eastern part of the State of Arizona.

25. Defendant Standard sells between 12 and 14 per cent of all the gasoline sold or distributed through independent retail dealer outlets in the Western area. In the majority [fol. 341] of States of the Western area, Standard is the largest single marketer of gasoline through such outlets. Standard sold approximately 23 per cent of all the gasoline sold in the Western area during the year 1946.

26. The petroleum products sold and distributed throughout the Western area by defendants are known as both bulk products and as packaged goods. For the purposes of distribution of bulk products, the territory comprising the "Western area" is divided into 23 distributive divisions. Defendants supply such products to the "independent dealers" in such divisions by various transportation methods including tank cars, tank trucks, barge and tankers. In some instances defendants distribute the refined product directly from its refineries to the underground storage tanks of "independent dealers." In most instances defendants transport their products from their refineries to various bulk plants which are located throughout the seven states of the "Western area" from which plants such products are delivered by tank truck to the

"independent dealer" at his "retail outlet." All the bulk plants used by defendants for distribution of petroleum products to "independent dealer" outlets throughout the Western area are owned by defendant Standard. The title, disposition and control of all "petroleum products" distributed by defendant Standard is retained by it until delivery is made to the independent dealer at his respective "retail outlet." Stocks of "petroleum products" in each of its bulk plants in the seven states of the Western area are constantly kept at an operating level by the defendant Standard.

27. Standard packages approximately all of the oils and greases sold by it to the "independent dealers" at its refineries located at Richmond, California and El Segundo, California. Some is packaged at Wilbridge, Oregon and Point Wells, Washington. Said oils and greases are distributed by Standard from these points to "independent dealers" in the "Western area." Defendants have divided the Western area into four distributive divisions for the purposes of the distribution of such packaged goods. In making such distribution Standard retains title to such packaged products until the "independent dealer" receives [fol. 342] such goods and signs the delivery slip at his retail outlet.

28. The automotive accessory products which are sold to and/or distributed by the defendants to the independent dealer are manufactured by various concerns other than defendants, and are shipped to defendants from factories located both within and outside the states of the Western area. The majority of such products bear the Atlas brand name. Shipments of such products are made by the manufacturers thereof to accessory warehouses maintained by Standard and thereafter distributed by defendants to independent dealers at the retail outlets. The eight accessory warehouses maintained by defendants, their location and the location by states of the independent dealers served by them, are as follows:

San Francisco—serves Central and Northern California; also dealers in Northwestern Nevada; also Lakeview District in Southern Oregon.

Salt Lake City—serves all Utah, Arizona, North of

Grand Canyon, Eastern and Northern Nevada and Southeastern Idaho.

Phoenix—confined to the State of Arizona and Needles across the Colorado River in California.

Los Angeles—Southern California and Southern Nevada.

Fresno—within the State of California.

Portland—Oregon, Southern Washington and Southwestern Idaho.

Seattle—Washington only.

Spokane—Eastern Washington and Northern Idaho.

29. Numerous manufacturers and producers of "petroleum products" and "automotive accessories" located both inside and outside of the states of the "Western area" other than those producers and manufacturers whose products are marketed by defendants, are prepared to and have attempted to sell their respective brands of "petroleum products," tires, tubes, batteries and miscellaneous accessories to "independent dealers" within the Western area who have entered into the written or oral agreements described in Paragraphs 11 to 15, inclusive, 17 and 18 herein. [fol. 343] Many manufacturers and producers have factories or refineries located in states outside the Western area and are engaged in the business of marketing their petroleum products or automotive accessories within the Western area. Other manufacturers and producers located within the Western area make, sell and distribute "petroleum products" or "automotive accessories" in interstate commerce throughout the seven states of the Western area. In many instances direct sales representatives of manufacturers and producers have unsuccessfully attempted to sell "independent dealers" who were and still are parties to the written or oral agreements described in paragraphs 11 to 15, inclusive, 17 and 18 herein.

30. The manufacturers, producers, distributors and sellers of products competitive to those sold or distributed by Standard or Standard Stations to the independent dealers have been unable to sell their "petroleum products" and "automotive accessories," have been unable to increase their sales or compete for a part of the market represented by the retail outlets under contract to defendants. The agreements, written and oral referred to in

Paragraphs 11 to 15, inclusive, 17 and 18 herein, have denied to manufacturers or suppliers of such competitive products access to the 5,937 retail outlets operated by the "independent dealers."

31. The intent, purpose and effect of the exclusive supply provisions of the written and oral agreements described in paragraphs 11 to 15, inclusive, 17 and 18 herein, have been to prevent the "independent dealer" operating under said agreements from handling any "petroleum products," tires, tubes, batteries and miscellaneous accessories other than those supplied or sponsored by defendants. When the "independent dealer" handled products competitive to those manufactured or sponsored by defendants, he did not do so openly. The agreements were interpreted by the independent dealers operating under them as precluding them from handling competitive products, except during the periods—especially during the war—when defendants were unable to supply the quantity demanded by the "independent dealers." The defendants reserved the right to determine the amount of tires, tubes, batteries and other accessories it would furnish the "independent dealers" operating under Distributor Agreements and Dealer Agreements TBA. Such dealers were denied access to [fol. 344] competitive products by the provisions of the foregoing agreements which were in effect. The independent dealers have been prevented from purchasing merchandise in an open competitive market of the quality which they desire and at prices determined by free and open competition. The written and oral agreements are intended to and in practice do confine the independent dealers to defendants' petroleum products and automotive accessories handled or sponsored by defendants.

32. The direct flow of interstate commerce has been affected by the written and oral agreements described in Paragraphs 11 to 15, inclusive, 17 and 18 herein (1) by channeling the products manufactured or sponsored by defendants regardless of their interstate or intrastate source, through an exclusive group of outlets; (2) by denying the independent dealers the right to buy competitive products and (3) by denying the manufacturers of competitive products the right to sell the "independent dealers" at the "retail outlets."

Conclusions of Law.

1. Defendants Standard and Standard Stations are engaged in the manufacture, sale and or distribution of petroleum products and automotive accessories in interstate commerce and in the course of such commerce have entered into contracts, written and oral, which provide for the sale and distribution of such petroleum products and automotive accessories to "independent dealers" in interstate commerce.

2. The written and oral agreements described in Paragraphs 11 to 15, inclusive, 17 and 18 herein, entered into between defendants and the "independent dealers" directly affect and unreasonably restrain the course of interstate commerce in petroleum products and automotive accessories in violation of Sec. 1 of the Sherman Act (26 Stat. 209; 15 U. S. C. 1).

3. The written and oral contracts and agreements described in Paragraphs 11 to 15, inclusive, 17 and 18 herein entered into between the defendants Standard or Standard Stations and the "independent dealers" substantially lessen competition and tend to create a monopoly in the sale and distribution of petroleum products and automotive accessories in violation of Section 3 of the Clayton Act. (38 Stat. 736; 15 U. S. C. 14)

[fol. 345] 4. The relationship established by the written and oral contracts and agreements entered into between defendants Standard or Standard Stations and the "independent dealers" as described in Paragraphs 11 to 15, inclusive, 17 and 18 herein is not that of employer and employee but is that of an independent contractor.

5. The written and oral contracts and agreements described in Paragraphs 11 to 15, inclusive, 17 and 18 herein have had the necessary and intended effect of foreclosing competition in the sale of petroleum products and automotive accessories from a substantial market for such products in seven states of the Western area.

6. The written and oral contracts and agreements described in Paragraphs 11 to 15, inclusive, 17 and 18 herein unreasonably restrain and substantially lessen competition in an appreciable segment of interstate commerce in the

seven Western states of the Western area in the sale and distribution of petroleum products and automotive accessories.

7. The written and oral contracts and agreements described in Paragraphs 11 to 15, inclusive, 17 and 18 herein have had the necessary and intended effect of denying the independent dealers access to competitors' products and of locking out such dealers from the sources of products originating in interstate commerce. Such written and oral contracts and agreements also confine the independent dealers to the handling of and dealing in petroleum products and automotive accessories handled or sponsored by defendants.

8. The written and oral contracts and agreements described in Paragraphs 11 to 15, inclusive, 17 and 18 herein have had the necessary and intended effect of denying manufacturers and suppliers of petroleum and automotive accessories competitive to those manufactured or sponsored by defendants access to a substantial number of potential outlets for their products in the seven states of the Western area.

9. The number of outlets and the volume of business in petroleum products and automotive accessories foreclosed to competition by the written and oral contracts and agreements described in Paragraphs 11 to 15, inclusive, [fol. 346] 17 and 18 herein, and in effect in the seven states of the Western area is substantial whether considered comparatively or not.

10. The provisions of the written and oral contracts and agreements described in Paragraphs 11 to 15, inclusive, 17 and 18 herein are illegal in their effect and the plaintiff is entitled to an injunction and other equitable relief as prayed for.

Dated this 31st day of June, 1948.

(S.) Leon R. Yankwich, United States District Judge.

Approved as to form ——, Attorney for Defendants.

[fol. 347] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Leon R. Yankwich, Judge.

No. 6159-Y

UNITED STATES OF AMERICA, Plaintiff

v.

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC., Defendants

FINAL JUDGMENT—Filed June 30, 1948

The court having rendered its opinion herein on June 7, 1948; having duly considered the proposals of the parties as to its judgment, and having filed its findings of fact and conclusions of law, wherein the defendants herein were found to have violated Section 1 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act, and Section 3 of the Act of Congress of October 15, 1914, as amended, commonly known as the Clayton Act,

It is hereby ordered, adjudged, and decreed as follows:

I

As used herein, "Standard" refers to the defendant Standard Oil Company of California; "Standard Stations" refers to the defendant Standard Stations, Inc.

As used herein, the term "retail outlet" refers to any [fol. 348] service station or garage at which "petroleum products" and/or "automotive accessories" manufactured or "sponsored by" defendant Standard or Standard Stations are sold or distributed by an "independent dealer."

As used herein, the term "independent dealer" refers to the operator of any "retail outlet" who operates such retail outlet as an independent business enterprise and not as an employee or agent of defendant Standard or Standard Stations.

As used herein, the term "petroleum products" refers to products obtained or manufactured from natural gases or crude oil by any process and sold or used as a fuel or

lubricant for automotive vehicles, together with miscellaneous oils and compounds derived from such natural gases or crude oils and designated for various specific uses and includes such petroleum products as are manufactured or "sponsored by" defendants and sold by defendants "Standard" or "Standard Stations" at any retail outlet operated by said defendants or either of them.

As used herein, the term "automotive accessories" refers to replacement parts and articles other than "petroleum products" used on or in the servicing or repairing of automotive vehicles and includes tires, tubes, batteries, spark plugs, oil filters, oil filter cartridges, fan belts, battery cables, auto lamp bulbs, fuses, windshield wipers and blades, tire repair and vulcanizing kits, anti-freeze preparations, tire chains, waxes and polishes and other like items and includes such "automotive accessories" as are manufactured or "sponsored by" defendants and sold by defendants "Standard" or "Standard Stations" at any retail outlet operated by said defendants or either of them.

The term "sponsored by," as used herein, refers to petroleum products and/or "automotive accessories" which are not manufactured or produced by defendants "Standard" and/or "Standard Stations."

II

Defendants Standard and Standard Stations have entered into contracts which unreasonably restrain interstate trade and commerce in petroleum products and automotive accessories in violation of Section 1 of the Act of Congress of July 2, 1890, as amended, 26 Stat. 209; 15 U. S. C. 1, [fol. 349] commonly known as the Sherman Act.

III

Defendants Standard and Standard Stations have entered into contracts which substantially lessen competition and tend to create a monopoly in the sale and distribution of petroleum products and automotive accessories in violation of Section 3 of the Act of Congress of October 15, 1914, as amended, 38 Stat. 731; 15 U. S. C. 14, commonly known as the Clayton Act.

IV

All of the provisions of any Dealer Agreement (Government's Exhibit No. 1), Distributor Agreement (Government's Exhibit No. 2), Petroleum Products and Equipment Agreement (Government's Exhibit No. 3), Dealer Agreement TBA (Government's Exhibit No. 4), Sublease Agreement (Government's Exhibit No. 5), and all provisions of like or similar import or effect either expressed or implied in any other agreement or instrument between defendants Standard and/or Standard Stations and any independent dealer which contain the condition, agreement or understanding that said independent dealer shall purchase or acquire for sale all his requirements of petroleum products and/or automotive accessories which are used or sold or bought to be used or sold by said independent dealer at a retail outlet from defendants or either of them, are hereby adjudged unlawful and declared illegal and void. This declaration of illegality does not extend to other and separable provisions of said agreements or subleases which do not contain any such or similar condition, agreement or understanding.

V

All of the provisions of any oral agreement, arrangement or understanding between defendants Standard and/or Standard Stations and any independent dealer which contain the condition, agreement, or understanding, expressed or implied, that said independent dealer shall purchase or acquire for sale all his requirements of petroleum products and/or automotive accessories which are used or sold, or bought to be used or sold by said independent dealer at a retail outlet from defendants, or either of them, [fol. 359] are hereby adjudged unlawful and declared illegal and void. This declaration of illegality does not extend to other and separable provisions of any agreements or subleases which do not contain any such or similar condition, agreement or understanding.

VI

The defendants Standard and Standard Stations, their successors or assigns and their officers, directors, agents, representatives, and all persons or corporations acting or claiming to act on their behalf be and they are hereby

perpetually enjoined from entering into, or enforcing the provisions of any contract, agreement, or understanding, written or oral, expressed or implied, with any independent dealer or from inducing or compelling, or attempting to induce or compel, by any means whatever, any independent dealer to enter into any contract, agreement, or understanding, written or oral, expressed or implied, which requires:

(a) an independent dealer to secure all of his requirements of petroleum products from defendants or either of them or which prevents him from handling or acquiring for sale petroleum products from sources other than the defendants;

(b) an independent dealer to secure all of his requirements of any one or more automotive accessories from or through defendants or either of them, or which prevents him from handling or acquiring for sale any automotive accessories from sources other than defendants.

VII

Defendants Standard and Standard Stations, their successors or assigns, and their officers, directors, agents, representatives and all persons or corporations acting or claiming to act on their behalf be and they are hereby perpetually enjoined from selling or attempting to sell any petroleum products or any automotive accessories to any independent dealer on the condition

(a) that said independent dealer shall purchase other [fol. 351] petroleum products or automotive accessories from the defendants, or either of them;

(b) that said independent dealer shall not handle or sell at a retail outlet petroleum products and or automotive accessories other than those sold or sponsored by defendants.

VIII

Within sixty days after this judgment shall become operative and go into effect, defendants shall send written notice by registered mail to each independent dealer with whom a defendant then has existing written or oral contractual relations of the provisions of this decree in such form as is first approved by the attorneys for the plaintiff or by

the court in the event the attorneys for the plaintiff and the defendants are unable to agree on the form of such written notice.

IX

Nothing contained in this judgment shall enjoin or restrain either defendant from selling or contracting to sell petroleum products and or automotive accessories including such products as are sponsored by defendants, to independent dealers on the condition that any pump or tank or other container or receptacle for such products, furnished by defendant and marked as such to an independent dealer, shall be used solely for the storing, handling or dispensing of defendant's petroleum products and to prescribe by agreement or regulations not inconsistent with the provisions of this decree for the storage, handling, or dispensing of such products.

X

Nothing contained in this judgment shall enjoin or restrain either defendant from freely selecting independent dealers to whom it will sell or contract to sell any petroleum products or automotive accessories including any such products sponsored by defendant or from declining or refusing to sell or contract to sell any petroleum products or automotive accessories including any such products sponsored by defendants, to any independent dealer provided such refusal to deal on the part of the defendants or either of them is not based on the refusal of the independent dealer [fol. 852] to accept conditions prohibited by this decree.

XI

The enforcement of this judgment is stayed until the expiration of six (6) months from the date of the entry of this judgment and, in the event an appeal is taken from this judgment or any part thereof, the enforcement of this judgment is stayed until the expiration of six (6) months from the date such appeal is finally determined.

XII

For the purpose of securing compliance with this judgment and for no other purpose, any duly authorized representative or representatives of the Department of Jus-

tice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on notice reasonable as to time and subject matter, to either or both defendants, made to its principal office at San Francisco, California, and subject to any legally recognized privilege, be permitted (1) access in the presence of defendant's counsel or other representative during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment; (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding such matters, provided, however, that no information obtained by the means provided in this paragraph shall be divulged by the Department of Justice to any person other than a duly authorized representative of such Department except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

XIII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions [fols. 353-354] as may be necessary or appropriate for the construction or carrying out of this judgment, for the amendment, modifications or termination of any of the provisions thereof, for the enforcement of compliance herewith and for the punishment of violations thereof.

XIV

Judgment is entered against the defendants for all costs to be taxed in this proceeding.

(S.) Leon R. Yankwich, United States District Judge.

Dated: June 30, 1948.

Without waiving objections to any of the provisions of the within order, said order conforms to the additions to and changes in the order as submitted by the plaintiff and

as made by the Court after hearing had in open court June 28, 1948.

William C. Dixon, Special Assistant to the Attorney General; W. Alan Thody, Special Assistant to the Attorney General; Lawrence W. Somerville, Special Attorney; Edwin U. Driscoll, Special Attorney. By William C. Dixon, Attorneys for plaintiff.

Lawler, Felix & Hall, Pillsbury, Madison & Sutro, Marshall P. Madison, John M. Hall, by John M. Hall, Attorneys for defendants.

Judgment entered June 30, 1948.
Docketed July 1, 1948.
C. O. Book 51, Page 638.

Edmund L. Smith, Clerk, by (S.) John A. Clubbess, Deputy.

[fols. 355-356] In the District Court of the United States for the Southern District of California, Central Division

Honorable Leon R. Yankwich, Judge Presiding

No. 6159-Y Civil

United States of America, Plaintiff,

v.

Standard Oil Company of California and Standard Stations, Inc., Defendants

Reporter's Transcript of Proceedings. Filed July 26, 1948

Los Angeles, California, May 4, 1948

Appearances:

For the Plaintiff: William C. Dixon, Special Assistant to the Attorney General, W. Alan Thody, Special Assistant to the Attorney General, Lawrence W. Somerville, Special Attorney Antitrust Division, Theodore Driscoll, Esq.

For the Defendants: Lawler, Felix & Hall, By: John M. Hall, Esq., Everett A. Mathews, Esq.

[fol. 357] Los Angeles, California,

Tuesday, May 4, 1948, 10:00 A. M.

The Clerk: No. 6159 Civil. United States of America vs. Standard Oil Company of California and Standard Stations, Inc., for trial.

Mr. Hall: The defendants are ready.

Mr. Dixon: Ready for the Government, your Honor.

Mr. Hall: Might I move the association, for the purposes of this trial, of Mr. Everett A. Mathews, of San Francisco, for the defendants.

The Court: Mr. Mathews will be associated in the case.

STATEMENT BY THE COURT

Gentlemen, this case has been pending for some time, and during its pendency quite a large number of proceedings were had before me, so I am thoroughly familiar with the issues which are raised by the pleadings. I have also studied, since they were filed with me, the trial briefs in the case. The plaintiff has filed a very elaborate trial brief of some 78 pages, to which some exhibits are attached, and some forms of contracts to be introduced.

Mr. Hall: I think that was the defendant, your Honor.

The Court: The defendant, I meant. I mentioned them first, because it was filed first, and I had the benefit of it over last week end. I studied it very thoroughly. Many of the cases which are cited I am familiar with, as is evidenced by the opinions I myself have written on the [fol. 358] subject, both in cases tried here, and in the last antitrust case which I tried in the Northern District of California, the Electrical Contractors case.

I have also had the benefit of the Government's original memorandum. The reply memorandum was only filed yesterday. I have gone through it. I think the memorandum of the Government is chiefly a comment on the cases cited by the defendant, and no new cases with which I am familiar are cited in it.

I will say, however, that I have not had the opportunity to read it as carefully as I did the others, because of the time I received it. As a matter of fact, it was filed after hours. It was 5:30 when a copy was put in front of me right here on the bench. In order to clear my calendar for this case, I had to finish the trial of a case yesterday afternoon.

I think counsel are also familiar, although no reference is made to it, with the Cement Institute case, which the Supreme Court decided on April 26th. I have what is called the slip decision, part of the white decision, which is sent out officially to all the District Judges. Those are also available to the attorneys who ask for them, because, as I understand, I think one of the agencies, like the Commerce Clearing, makes photostatic copies of them, and sends them out. I may say one of the judges in San Fran- [fol. 359] cisco, Judge Goodman, does not wait for the official slips to reach him, because the others are airmailed, and can be placed in the hands of the judge within three or four days.

There were some decisions reached yesterday, about which we know something from the press today, but I doubt if they are of any special significance in the case. In the event they should develop to be we will have them before many days have elapsed, because they will probably reach me by the end of the week.

Another reason I call your attention to the Cement case is that the court there makes a point which is going to be very important in this case, and that is, that the Supreme Court's attitude differs in cases where the question of restraint arises, in actions, civil or criminal, brought directly to enforce the Sherman Antitrust Act, or the Clayton Antitrust Act, from its attitude in merely reviewing the unfair practice which the Federal Trade Commission has found in a particular case. Much of the argument in the briefs relates to a great extent to what the courts may have said in cases arising from orders of the Federal Trade Commission.

[fol. 360] I have expressed repeatedly the view, and I expressed it again the other day in an opinion I filed last Friday in a portal to portal case, that when you consider the problem of commerce or restraints upon commerce of what is commerce the only way of reconciling the apparent inconsistency which exists in decisions is to bear in mind that there is no abstract concept of what commerce is, but that the Supreme Court, from its entire history, has contented itself with determining what commerce means in a particular kind of legislation.

To illustrate, for instance, that troublesome problem of "stoppage", of coming to rest, which is very important

and which will arise in this case under the pleadings, it is one thing when the court is dealing with a stoppage, for the purpose of reviewing the power of the state to regulate goods during stoppage, and it is another thing when the court is considering the doctrine of stoppage as it arises under the Anti Trust Laws in a case involving the alleged violation of the law.

To illustrate, we have the famous Gallagher cases and the Telephone cases, with which counsel for the defendants are familiar, because I think they appeared in the case, they being also attorneys for the telephone company, where the court found that certain equipment was being shipped into the State of California, not to be used here [fol. 361] but merely to be temporarily stored here for use on the system elsewhere, such as, for instance, the Southern Pacific case. We have railroad ties and other equipment for use in Arizona. In the case of the Telephone Company the equipment to be used all over its system and in the Pacific southwest.

Now, in those cases the court held that the flow of commerce came to an end and that during the time it was at rest in the State of California, the State of California could, under the use tax statute; tax them even though they were intended for interstate commerce afterwards. There is one line of decisions.

Now, when you come, however, to the question of what interstate commerce is and when there is a stoppage so far as it relates to antitrust violations, we have a different theory. We have what is known as the theory of continuous flow—a theory which I myself applied in the Food and Grocery case, with which you are both familiar and which you both cite in your opinions, and even though it holds the goods in interstate commerce come to rest in that case on the shelves of the groceries, where there is a continuous flow of such goods and agreements which relate to them and affect the price structure are made locally, nevertheless, because of the continuous flow of these goods such as canned milk and baking powders and the like from interstate commerce, into the interstate commerce, that notwithstanding distribution of them locally, notwith- [fol. 362] standing the fact that there is a period of rest on the shelves of the grocer, that any restriction which applies

to them violates the law, notwithstanding the temporary stoppage.

Perhaps in that particular case, as an instance, I can point to an illustration showing how the judges themselves may need time to grasp merely that point. Because if you compare the Food and Grocery case with the short memorandum I wrote of what is known as the Smith Case, E. F. Smith v. Atlantic and Pacific case, a memorandum which I did not intend for publication but which found its way years after I wrote it, you will see that there is language in the Smith case which is at variance with what I said seven years afterwards in the Food and Grocery Case.

In other words, in the Smith case I applied absolutely the doctrine of stoppage. Although the Smith case was an Anti-Trust case, it was a private suit for treble damages alleged to have been caused by a group. And, of course, my only justification, perhaps, is that I was passing merely on a complaint and did not pass upon a factual situation which called for the difference.

But I admit that there is an apparent inconsistency between the two, which, of course, can be explained in only one way, and that is that in the meantime I had seen the light. I had been in the position of the little boy who [fol. 363] tried to sell a Methodist minister a litter of kittens in the morning, who told him they were Methodist kittens, and in the afternoon he saw the Presbyterian minister who had heard the story, and he told him that they were Presbyterian kittens. And then when the Presbyterian minister asked him if it is not a fact he offered them to the Methodist minister and told him they were Methodist kittens, he said, "Yes, but since that time they have opened their eyes."

So I thought I would make the statement, gentlemen, to indicate to you that I have a general idea of the principles of law that are involved; and then, with that premise, I will ask you if you desire to make a statement, a general statement, of the issues. You may do so despite what I said.

In other words, I do not want you to take my statement that I know the issues and am fairly familiar with the law to prevent you from making such statement as you desire, giving me a broader elucidation of the issues in the light of the facts that you may prove, for my idea of the issues is derived strictly from the pleadings and such informa-

tion as was disclosed to me during various hearings I have had on the various matters which have come before me.

All right, Mr. Dixon.

Mr. Dixon: May it please the court——

The Court: I may add this, gentlemen: That you will not be interrupted at all during the course of this trial. [fol. 364] I have cleared my calendar, as I told you I would, and whatever time is necessary for the balance of this month to hear the case is available. And, as your know, I never look at the clock and I do not hesitate to work more than the proverbial hours, which are mostly proverbial, because we do not observe them. Even in San Francisco, while their courts are supposed to adjourn earlier, for some reason or other whenever I sit there—and I am expected to sit there in the month of July again, having been asked to go up there and try another case—we do not observe the quitting rules, but have to conform the time to the needs of the case and also to the particular matter that is before the court.

It is not my custom to interrupt an examination that should be completed or can be completed in a few minutes, merely because the clock strikes 12:00 or the clock strikes 5:00, and you are all familiar with that. So I give you the assurance that all the time is available for the reasonable time, for the reasonable limits for the proper presentation of both the law and the facts in this case.

With that, I yield to you and sit back and listen.

Mr. Dixon: Thank you, your Honor. We appreciate your remarks. And before going into the case, I would like to inquire whether it is your Honor's intention at the present time to hold half a day session on Monday or to adjourn.

The Court: No; at the present time it is not. I will [fol. 365] not hold any session at all until I see if we are crowded for time.

For one thing, that is all the time I have to do the study that is required in the meantime, and if tried cases on Monday it means that the only day I have left, except week-ends, for study, is gone, and there are matters which arise that require study.

I do have one case under submission in which the briefs have not come in yet, a case I tried. Otherwise there are other matters which come up on law and motion matters,

many a time on Monday. You have been present here, when a matter took five or 10 minutes to argue, and it may have taken me two weeks to work out. Many times in tax matters and reviews of referee cases the matter is submitted on briefs or argued very briefly, and it is a matter that requires a lot of study to study the long record and, in many instances, the writing of an opinion is a matter of such importance that it calls for a statement of a view of it which can be followed by the referees in future cases.

[fol. 366] So, at the present time we will hold court from Tuesday to Friday, inclusive. Next Monday I will be free. What will happen one week from next Monday I can't tell. ~~It all depends on how far~~ we have advanced with the case.

Mr. Dixon: We appreciate that advice, your Honor. It will enable us to schedule our witnesses.

The Court: So far as I am concerned, gentlemen, so long as the continuity is not broken, or if I am not stopped in the middle of the afternoon for the absence of witnesses, you can stagger your witnesses. There is one thing, in a case of this character, it may well be that any hiatus that arises can be filled by reading the particular portion of exhibits. As you know, in a case without a jury, it is not my custom to stop an interrogation to have a portion of an exhibit read, where you want to direct attention to a particular matter, but I prefer, when the witness is off the stand, that the portion of the documentary evidence to which you desire especially to call my attention, be read to me. Otherwise, as the document is received, I will just order it transcribed into the record, and I can read it later on.

So, in these cases, when we have a lull in the proceedings, or one of the lawyers gets tired, somebody gets up and reads. We have done that before, in long cases. We did that in an antitrust case in San Francisco, a criminal case against the Electrical Contractors. When one of the [fol. 367] men got tired examining witnesses, we gave him a respite by having some of the others read a portion of the documents to the jury. That was a jury case. In other words, I am going to accommodate myself, so far as the evidence is concerned with your presentation of it, and if you work hard, I work along with you, so I don't put any greater burden on you than I do myself.

OPENING STATEMENT ON BEHALF OF PLAINTIFF

Mr. DIXON: Thank you, your Honor. We appreciate your Honor's views on the subject. It will be very helpful during the conduct of the trial, I am sure, to enable us to get in the evidence as quickly and efficiently as possible, so the time of the trial will not be unduly extended.

In making an opening statement in this case, it will perhaps be superfluous, in some respects, to comment upon the issues,—whether or not the products involved here are or are not in interstate commerce, at this stage of the proceedings, because your Honor has amply stated, both from previous decisions you have written, and the law generally, the fact that you are fully acquainted with the theories in a case of this kind, the in commerce and the effect on commerce theories that are both involved in an antitrust suit.

However, I wish to make a few brief comments about the case itself, which we hope may be of some assistance to your Honor in sharpening or bringing into focus the issues which govern the matters which are involved in this lawsuit.

[fol. 368] In the opening statement it perhaps might be well to incorporate all the allegations contained in our complaint, but we do not intend to dwell long on all the allegations, because they are in the record, and speak for themselves.

This is a case, however, which involves approximately five different types of written agreements which are in use by the defendants in seven western states, in the course and conduct of their business of refining and selling petroleum products. Also, in distributing, for sale, at retail dealer outlets, certain other products which they acquire from other sources, that is, manufactured from other sources, not by the defendants themselves, which are distributed and sold through these retail outlets which are involved in this case.

The State of New Mexico is not involved in this proceeding, so that in any reference to the western area, as it is described in the complaint, we can keep in mind that the State of New Mexico is not involved, since our information implies that the defendants do not operate in that state in the manner and under the contracts involved in this suit.

As indicated in the complaint, there are five different types of agreements that the Government challenges as being in violation of the Sherman and Clayton Acts. The Government contends that these agreements impose and are an unreasonable restraint of trade under the Sherman Act, Section 1 of that Act, and also a violation of Section [fol. 369] 3 of the Clayton Act, as tending substantially to lessen competition in the sale of these products, and tending to promote a monopoly in the area in which these agreements are used by the defendant companies.

I do not need to go into the background or nature of the type of business the defendants are engaged in in this case. It is not only set forth in the pleadings, but also is a matter of common knowledge. But I do believe it is important, perhaps, to know that the agreements involved here have a background of some 20 years in use in the industry, in various forms, by these defendants.

Starting in the late 20's they adopted what is known as the lease; sublease and license system of distributing their products through retail outlets, and the agreements used at that time,—the lease and sublease arrangement,—required the dealer operating the retail outlet to secure all of his petroleum requirements and products from the defendant companies, and further restricted him from using or selling or storing or handling any products of that character made by any other manufacturer competitive with the defendant companies.

In the early '30's the system was modified somewhat by what is called the lease and agency system, whereby these dealers, who were independent business men, were denominated as agents of the defendants for the purpose of [fol. 370] selling products of the company, and similar restrictions were imposed upon them, and upon the use to which they could be put at which the service station outlet was located, which was involved in the agreement.

With the advent of certain new forms of taxation in the early '30's,—social security, unemployment compensation,—and, as agents of the defendant companies, these dealers were at first subject to, or at least would be in a position under that arrangement whereby the defendant companies would be subject to additional taxation, so the agency arrangement was dispensed with, and what was called, in the memorandum, perhaps for a better term, the Iowa

plan, in which the same independent business men who operated these retail outlets, were subject to the same restrictions they had been subject to under the lease and agency arrangement, namely, he was prevented from handling any petroleum products competitive with those manufactured and handled by the defendant companies.

Also, in the '30's, a new phase of the business was developed, since it became recognized that these retail outlets, at which the motorist stopped and purchased his gasoline and oil and greases, were also the source of the distribution and sale of automotive accessories. So we find, in the early '30's, a new type of agreement is coming into effect, called the distributors agreement, which obligated [fol. 371] the man directly, and did obligate them to handle only such automotive accessories, principally confined to tires, tubes, and batteries, as the defendant companies handled. And the result was that under these two types of agreements, which restricted the independent operator of these various retail service station outlets in the seven states involved in this case, in which the defendants do business, that there was ultimately a veritable wall that was thrown up around all of these outlets which totally excluded the independent business men subject to these agreements, from acquiring any petroleum products or any automotive accessories, when he was subject to that type of agreement, from any source other than these defendants. In other words these agreements operated to completely eliminate any and all competition for that type of business at these outlets.

Now, the Government expects the evidence will show that the number of these agreements in effect at the present time, the number of outlets involved, are substantial. In other words, we expect the evidence will show that there are in excess of 7,000 retail outlets that are subject to one or more of these various types of agreements. That number includes 1063, I believe the evidence will show, which are company operated stations or outlets. In other words, these stations are operated by the defendant Standard Stations, Inc., and are wholly what we call company [fol. 372] operated stations as distinguished from a station which is operated by what the agreements refer to as an independent business man. So that the total non company operating outlets involved in this case in the seven States are in excess of 5900.

The Court: Is it your contention at the present time, regardless of what may have been in the past, that they operate under the contract which specifically forbids them handling products of other companies, or do you interpret the provisions which are set forth in the dealers' agreement, page 3 of the supplement to the defendants' memorandum, the clause whereby the dealer agrees to buy all of his requirements from the company, as implying a prohibition against them? I think my question is plain enough.

Mr. Dixon: Yes, your Honor. It is the contention of the Government that the type of provision existing in these contracts does operate to definitely impose a restraint, and eliminates any competition by reason of the language of the provisions I have referred to.

The Court: Let me ask you this: I notice in your memorandum you claim the agreement is per se, without anything else, a violation of the Antitrust Statutes,—both of them, or at least of the Clayton Act. Do you intend to rely upon the wording of the agreement, or do you intend, in addition thereto, to have testimony showing that that was the effect, that is, as a fact it has prohibited persons [fol. 373] from actually soliciting or getting that business?

Mr. Dixon: Both, your Honor.

The Court: Or is that a fair question?

Mr. Dixon: It is a very fair question, your Honor. I think also that the agreements, when taken in their context, and the volume in which they are in use and in effect in the States,—the agreements, perhaps would tend to speak for themselves, because the effect of the language is to exclude dealers subject to the restriction from acquiring or attempting to acquire, legally speaking, under the contracts, any petroleum products or automotive accessories described in the agreement, from any other source.

The Court: The reason I am asking this question is because the Supreme Court, in several cases, including the General Motors case,—*Pick Mfg. Co.*, v. *General Motors*, 299 U. S., 3, intimates that in itself a provision whereby a person agrees to supply his needs from certain sources, is not in itself violative of the acts. That the Court must, in addition thereto, find that the effect of that was a violation of commerce activity, but when we are dealing with an agreement which involves no price fixing, you must remember that while it was an opinion in which three

judges did not participate—I do not know why; I presume Mr. Justice Stone did not, because he was Attorney General when the matter was instituted, although this was a [fol. 374] private lawsuit, but I do not know about the others. At any rate there is no dissent, but three justices did not participate, which left six. In that case the lower court had dismissed the complaint because it was satisfied that, notwithstanding the exclusiveness of the agency agreement, which in this case was specific, because the dealer agreed he would not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and chassis second hand or used parts or any part or parts not manufactured by or authorized by the Chevrolet Motor Company. Notwithstanding that the Supreme Court sustained the trial court in finding, despite this exclusiveness, it did not result in a restriction on interstate commerce. The plaintiff in that case could not recover damages or challenge the validity of these contracts.

While I have said the Court approaches the problem, where there is a restriction, of course from different angles, depending upon the legislation to be interpreted, I think you will agree with me on one thing, and that is, when it comes to antitrust legislation, the citeria are the same, no matter which of the three actions are involved. There are only three types of proceedings that can be instituted under the Antitrust Acts, two by the Government, and one by a private person. The two by the Government are a criminal prosecution or a civil action in equity, such as the present one. The other is a suit by a private indi- [fol. 375] vidual who has been harmed by these restrictions, or monopolistic practice, and brings suit for treble damages under the Act.

My impression of the law is this, that the Supreme Court has consistently applied the same criteria in all three types of cases. In other words, they don't say what is a restriction when you have a criminal action, is not a restriction when you have a civil action, whether brought by the Government or a private party. Do you agree with me on that?

Mr. Dixon: I think in a lot of the cases, particularly where they involve private suits, that you have described, frequently go off on a different angle.

The Court: There is no question about that. But I am talking about interpreting the law. The Court does not

say what is a restriction in a private suit. You might not be able to prove it, or satisfy a jury, because the quantum of proof is different, and what warrants damages in one case might not warrant the issuing of an injunction. When we are dealing with restrictions we are dealing with a type of interference in interstate commerce, which are violative of the law, regardless of the type of action in which the question arose.

Mr. Dixon: I see your point, your Honor. I think it is certainly possible, in a civil case, assuming that the same facts are pleaded as are pleaded in this case, the same [fol. 376] tests would be applicable.

We expect the evidence will show, your Honor, that there were over 7,000 of these various types of agreements, the five of those described in the complaint, that are in use by the defendants in the course of their business in the seven-State area involved in this complaint. That a total number in excess of 5900 retail outlets are affected by this type of restriction in the seven States. By that, I mean 5900 non-company operated outlets as distinguished from company operated outlets, which we mentioned a moment ago. In other words, the total outlets involved here are some 7,000, in which an excess of 5900 are subject to written and oral agreements between the defendants and these dealers who are referred to in the contracts as independent business men operating these outlets.

We expect the evidence will show that in excess of 5100 of these outlets are subject to a written agreement, and that the balance, a little in excess of 700, are subject to all restrictions charged in the complaint.

I believe the evidence will show this latter type of outlets will be referred to as an open account outlet, during the course of the trial and the introduction of the evidence.

Now, to break down the total number of agreements that I have suggested here, which the evidence will show are involved in this case. We expect the evidence will show that [fol. 377] in excess of 1600 of these agreements are dealer agreements. In excess of 22 are dealer TBA agreements; in excess of 900 are petroleum products and equipment agreements. In excess of 500, distributor agreements. Approximately 1800, following the category of leases, but all

of these agreements contain restrictive provisions described and referred to in the complaint.

Quite frequently, where a lease of the type involved in this case is used, it is used in connection with one of the other types of agreements that I have mentioned, so that that accounts for in excess of 7100 of the agreements that are involved, and the total of about 5200 stations that are actually subject to the written type of restrictions.

I believe the complaint sets forth in detail what the Government contends the effects of these agreements to be. As suggested by your Honor, and as your Honor has already indicated, you desire to know the position of the Government with reference to these agreements, and it is on the basis of the context and facts in this case that these agreements are illegal per se, and a violation of the Sherman and Clayton Acts.

We expect, however, that in addition to the agreements themselves, and the evidence that will be submitted with relation to a number of these agreements that are in effect, that some additional testimony will be submitted to your [fol. 378] Honor which will indicate what we submit is obvious from the language of these agreements themselves, namely, that they do operate in fact to exclude the sale of competitive petroleum products to outlets subject to that restriction, and to the sale of automotive accessories of the kind and type handled by the dealer under the agreements involved in this case.

In a few words, to summarize the contention of the Government, it is simply this: That these agreements, the context, and the use and the number in which they are used in this case by the defendant company, have operated, and do operate, to impose a wall around all of these outlets that are involved in the seven States covered by these agreements, in which the defendants do business, so that no other company in automotive automobiles, or whether it be in the sale of tires, tubes, and automotive batteries; and other types of accessories, that these agreements have operated in fact and legally, to exclude all competition, and on that basis we submit the agreements, under the cases referred to in the brief we have filed with your Honor, are illegal per se under the Sherman and Clayton Acts.

The Court: We will take a short recess, and then I will hear from other counsel.

(Short recess.)

[fol. 379] Mr. Hall: With your Honor's permission, defendants will reserve any statement of factual matters that they expect to prove.

On the legal issues we have, as your Honor has pointed out, filed a printed memorandum which, to the best of our ability, outlines the legal issues and our position upon each issue; and I do not feel that I could add anything to that at this time which would be helpful to the court.

The Court: All right. The defense may reserve the right to present any opening statement to the conclusion of the Government case if they so desire.

Mr. Dixon, proceed with the presentation of your testimony.

OFFERS IN EVIDENCE

Mr. Dixon: We will call for return of the two subpoenas served on the Standard Oil Company to produce certain documentary evidence called for in the subpoenas. We will first call for return on item 1 of the first subpoena served on the Standard Oil Company and Standard Stations, Inc.

Mr. Hall: Now you are referring to the subpoena which is dated April 16?

Mr. Dixon: That is right, Mr. Hall.

Mr. Hall: The first nine items on that subpoena, your Honor, are covered by tabulations which I have already discussed with counsel and submitted to him in the form of a stipulation.

[fol. 380] You have those, I believe, Mr. Dixon, stipulation No. 1?

Mr. Dixon: Yes; I have the form of stipulation, Mr. Hall, but I thought it would be better for the record to have the record show, as these matters are called for, what the compilation would show that is referred to in the subpoena on each item. In other words, the return on the first item would merely call for the forms of various types of agreement, the various types of agreement described in the complaint.

Mr. Hall: Mr. Dixon, if you will pardon me?

Mr. Dixon: Certainly.

Mr. Hall: Why, in order to save time, do we not offer items A to D in that subpoena, inclusive, as a compliance

with the calls of the subpoena you refer to, which are 1 to 9, inclusive?

Now, if there is further matter that you desire, under those calls, if you will specify what it is in the record, I will tell you why it is not practicable to encumber these records to obtain them.

Mr. Dixon: I would rather handle it this way, Mr. Hall, if it is agreeable. And I think the record would be in better shape if we would just put in the particular documents, for example, called for in No. 1, and we will ask the clerk to mark them for identification as Government's exhibits numbered as we get them and put them in that way, [fol. 381] if it can be done. And then other items 2 through 9, as they are called for, and that the compilation—I mean the data that is contained in the suggested stipulation can be given and go into the record as a compliance with that part of the subpoena. If that is satisfactory to you, it is agreeable with the Government to handle it that way.

Mr. Hall: Well, I have indicated it is not satisfactory to me, but you are putting in your case, counsel, and if that is the way you want to do it, we will try to comply with what you want.

The Court: I think, Mr. Dixon, the best method to pursue is merely to ask for the production of the document and then use your own judgment as to the order in which you desire to present it.

Mr. Dixon: That was my thought, your Honor, to call for the documents. For example, under No. 1, and have them marked for identification by the clerk.

The Court: I see. All right, Mr. Hall, will you hand such documents as you have and state for the record whether it is in response to that subpoena?

Mr. Hall: All right. Responsive to—what shall we call this subpoena, No. 1, Mr. Dixon?

Mr. Dixon: Yes.

Mr. Hall: Responsive to subpoena No. 1, item 1, I hand Mr. Dixon a form of Dealer Agreement, a form of Dealer Agreement TBA, a form of Petroleum Products and Equip- [fol. 382] ment Agreement, a form of Distributor Agreement, and a form of Sublease.

The Court: Mr. Hall, for my own information——

Mr. Hall: Those are exactly the forms, your Honor, which are annexed to the memorandum.

The Court: Which are annexed to the 27 pages of your memorandum?

Mr. Hall: Yes, your Honor.

The Court: Printed memorandum?

Mr. Hall: Yes, your Honor.

The Court: I see. All right.

Mr. Dixon: We ask that they be marked for identification as follows:——

The Court: Now, you will have to give them to me so I will identify them. Hand them to the clerk and he will give them to me. Give them to me in the order in which you have them and I will give them a number and identify them for the record.

Mr. Dixon: Dealer Agreement form.

The Clerk: Do you want them all in one number, your Honor?

The Court: Separate. Let us have them.

Mr. Dixon: All of them, your Honor?

The Court: The agreement which is entitled Dealer Agreement and which at the end bears the legend "S-452 [fol. 383] (2-46)", also this legend at the end, "Dealer Agreement. For Use in California, Oregon, Washington, Nevada, and Arizona" will be marked for identification Government's 1.

The Clerk: Government's 1 for identification.

The Court: It consists of two pages.

The agreement entitled Distributor Agreement which at the end bears the legend "SS-130-E(1-42)" and also the legend "For Use in California, Oregon, Washington, Nevada and Arizona" marked for identification as the Government's 2.

Agreement entitled Petroleum Products and Equipment Agreement which bears at the end the legend "S-475 (5-44)" and also the legend on the second page, left-hand corner, "Petroleum Products and Equipment Agreement For Use in California, Oregon, Washington, Nevada and Arizona" will be marked Government's 3 for identification.

Agreement entitled Dealer Agreement TBA which at the end bears the legend "S-452-TBA. (4-46)", and also the legend, left-hand corner of second page, "Dealer Agreement TBA For Use in California, Oregon, Nevada, Washington, and Arizona" will be marked Government's 4 for identification.

Agreement entitled Sublease which at the end has the legend "S-456 (3-45)", and on the left hand corner the mark "Sublease" will be marked for identification Government's 5.

[fol. 384] Mr. Dixon: Government's Exhibits for identification 1 through 5, inclusive, are offered into evidence, your Honor.

The Clerk: Are they admitted, your Honor?

The Court: They may be received.

The Clerk: 1 to 5, inclusive, in evidence.

Mr. Dixon: Return under item 2 of the first subpoena is called for.

Mr. Hall: With reference to items 2 to 9, inclusive, of the first subpoena I hand counsel sheets entitled Item A, Item B, Item C, and Item D containing statistics with reference to the number of documents outstanding and with respect to the number and location of the dealer outlets.

Counsel is familiar with these sheets, and by letter received from counsel before the trial, he states that "It is therefore agreeable to me that the data contained in the stipulation is used by whoever makes return of the subpoena for your clients on the trial."

I think that those items in the subpoena, with one exception that I will now call attention to, with that one exception, all of these items are covered by the data contained in the sheets that I have just handed counsel.

Now, that exception is this: That in certain of these calls of the subpoena, 2 to 9, counsel asks for the location of [fol. 385] service stations not only by state, but located by city or county. That would be an extremely burdensome task, and in my preliminary discussions with Mr. Dixon he has indicated that it would not be necessary for us at this time to comply with that part of the demand.

Mr. Dixon: That is correct, your Honor; and we will be satisfied with the return made in the form suggested.

The Court: All right.

Mr. Dixon: I have not had a chance to go over the return but I am sure that, subject to examination—Mr. Hall, with your permission.

Mr. Hall: Oh, certainly.

Mr. Dixon: —we will ask that those be marked for identification as the Government's Exhibit 6.

The Court: I think these can be received as one exhibit.

Mr. Dixon: That was my suggestion, your Honor. If it could be, I think it would simplify the matter.

The Court: Each sheet is marked, respectively, by letters; so we have A, B, C, and D, and there will be no difficulty in referring to the computations or compilations on any of the sheets.

The five sheets just handed to the court—I notice page 1 is missing, Mr. Hall.

Mr. Hall: Yes. This is incorporated in the stipulation.

The Court: This begins at page 2.

Mr. Hall: That is the reason page 2 should be the [fol. 386] first page. I thought at one time that counsel would consent to stipulate to this.

The Court: All right. They are marked A, B, C, and D; so that is sufficient. They may be received as Government's Exhibit 6.

The Clerk: Do they go into evidence, your Honor?

Mr. Dixon: Yes; we offer it in evidence.

The Court: All right; they may be received into evidence.

The Clerk: 6 in evidence.

Mr. Dixon: I now will call for return of item 10 of subpoena No. 1.

Mr. Hall: Item 10 of the subpoena calls for:

> "The records or a compilation prepared therefrom showing the dollar volume by product by cities (or counties if not within a city) and states for the years 1946 and 1947 of automotive accessories sold or consigned to any retail outlets referred to in Paragraph 9."

And paragraph 9 refers to the so-called open accounts, your Honor; so that the answer to paragraph 10 is that there are no such sales or consignments.

Mr. Dixon: The return on No. 11 of the subpoena is called for.

Mr. Hall: I hand counsel a paper in response to that particular call of the subpoena, bearing in the upper left-[fol. 387] hand corner the numeral 11, and call counsel's attention to the notes that are given on that sheet.

Mr. Dixon: Perhaps to expedite the return of the subpoena, your Honor, I might ask the court for leave to examine these records outside of the time the court is actu-

ally in session, but accept them for the time being and have them marked for identification so that we can proceed.

The Court: All right. It may be received as Government's 7 for identification.

The Clerk: Plaintiff's 7 for identification.

Mr. Dixon: Item No. 12 is called for.

Mr. Hall: Responsive to items 12, 13, 14, 15, 16, and 17 I hand counsel five sheets bearing in the upper left-hand corner the numerals, respectively, 12, 13, 14, and on one sheet 15 and 17, and on the fifth sheet 16.

Mr. Dixon: We ask that these be marked for identification, your Honor, as Government's Exhibits next in order.

The Clerk: Nos. 8 for identification, 9 for identification, 10 for identification, 11 for identification, and 12 for identification.

Mr. Dixon: No. 18, Mr. Hall.

Mr. Hall: No. 18, if the court please, calls for:

> "Any records or other data in your possession or under your control showing the total number of all retail outlets for petroleum products in the [fol. 388] States of California, Oregon, Washington, Arizona, Nevada, Idaho and Utah, by states or any other geographical units for the years 1939 to 1946 inclusive."

We have data as to the number of service stations in those seven western states. It consists of an inquiry made from the home office of the Standard Oil Company of California on March 24, 1948 to its various district managers, requiring from them a computation based upon certain forms which are prepared in the branches and in the districts known as "Form S-502" and "S-503".

I hand counsel now a copy of this inquiry which went out from the company, and also the replies that came in from the several districts to that inquiry; and attached to these sheets, also, is a final page showing a computation of the number of retail petroleum product outlets in those seven states other than the retail petroleum product outlets of Standard Oil Company of California.

If counsel wants to go into the matter further, these Forms S-502 and S-503 are forms which have been prepared and maintained for years by the company in the regular course of business. Those forms have been gath-

efed in from the various districts and are now at the home office of the company. Those forms run to about 3800 pages. If counsel insists, of course, we will bring down the 3800 pages.

[fol. 389] Mr. Dixon: That is not necessary, Mr. Hall, I am sure.

Mr. Hall: This gives a compilation based upon those original records prepared in the ordinary course of business.

Mr. Dixon: Thank you very much, Mr. Hall. That will be accepted as compliance with the request under the subpoena.

We ask that this be marked for identification, perhaps, as one exhibit, your Honor. It consists of several telegrams that have been clipped together. I would suggest it would be easier to have them marked as one exhibit. It relates to one particular type of information.

The Court: All right.

The Clerk: This will be Government's 13 for identification.

Mr. Dixon: Referring now to what we will call subpoena No. 2, Mr. Hall, we would ask that the documents referred to in said subpoena as Nos. 1 to 85, inclusive, in said subpoena, be produced.

Mr. Hall: Well, you mean 1 to 85 of Paragraph I, is that right?

Mr. Dixon: Yes.

Mr. Hall: Well, let us be complete about this. After this subpoena was served Mr. Somerville came to my office and amended it by a further call which, consistent with the usual amenities that prevail, I accepted; and, in addition to the 85, that called for 36 more.

[fol. 390] Pardon me, your Honor. This item 1 that we are talking about asks for:

> "The originals of any and all contracts and/or leases between the STANDARD OIL COMPANY OF CALIFORNIA and/or STANDARD STATIONS, INC. and the PERSONS AND CORPORATIONS HEREINAFTER NAMED and covering the property situated at the location hereinafter specified, which leases and/or contracts relate to the purchase and sale of petroleum products and/or automotive accessories:"

And then it names——

The Court: May I ask, those are the suppliers? Are those the persons called the "suppliers" in the complaint?

Mr. Hall: No. These are the stations, your Honor. These are the service stations.

The Court: Oh, the service stations.

Mr. Hall: I hand you, then, two packages of photostats, Mr. Dixon; one is marked "Paragraph 1" and there are tickets on the various items in this package which indicate the number opposite the name of the given dealer.

Then I hand you another package marked "Supplement to No. 1" which contains the documents you requested in the supplement to the subpoena informally served on me. In going through that, Mr. Dixon, you will find that there are certain omissions with respect to names. There are [fol. 391] certain of these individuals named who are no longer dealers of Standard, or others in certain cases, and insufficient identification of the location of the dealer to enable us to supply the documents requested.

Mr. Dixon: Thank you, Mr. Hall. I am wondering, rather than to have all of these documents marked for identification at this time, whether it would be agreeable to counsel that the Government accept these for examination for the time being, subject to the privilege of having them subsequently marked. And I assume there would be no disagreement but what they are company records; so if they are subsequently used or introduced into evidence, they would be required at that time to be put in evidence.

Mr. Hall: I think that that would speed it up if you will carry that out.

Mr. Dixon: Thank you.

The Court: The record will merely show that he has handed these to you for such use as you desire to make of them, to satisfy the requirement of the subpoena.

Mr. Dixon: Item 2 of subpoena No. 2 is called for.

Mr. Hall: This item calls for certain original documents, numbers 1 to 9, and then the same paragraph says:

> "together with any and all contracts and/or leases relating to the sale of petroleum products and automotive accessories entered into between STANDARD [fol. 392] OIL COMPANY OF CALIFORNIA and/or STANDARD STATIONS, INC., and any of the parties therein

named, where said agreements relate to any of the aforesaid properties."

Now, the contracts and leases relating to the properties referred to in sub-items 1 to 9 of Paragraph II are now handed to you. Some of those, Mr. Dixon, may be in the first package that I gave you a few moments ago.

As to the documents themselves covered in this paragraph in the sub-items 1 to 9, those documents or photostats of those agreements are already in the possession of the Government as a result of inspection under Rule 34. They inspected various documents, your Honor, under Rule 34 and made copies of those and those copies are already in the possession of the Government.

Mr. Dixon: That is correct, your Honor. And I assume it is agreeable with counsel that photostats of these documents themselves be used rather than the originals?

Mr. Hall: It is my understanding that throughout this trial either side may use photostats in lieu of the original documents.

Mr. Dixon: That is correct.

Mr. Hall: Subject to all other objections and subject to correction if the photostat be found inaccurate.

Mr. Dixon: That is right.

[fol. 393] Mr. Dixon: Item 3 of the subpoena.

Mr. Hall: In compliance with Item 3 referred to, I hand counsel a three-page schedule entitled: Notes Receivable, Status as of April 23, 1948.

Mr. Dixon: I ask that these be marked for identification.

The Clerk: Government's Exhibit 14 for identification.

Mr. Dixon: Item No. 4, containing documents 1 to 24, inclusive, of the second subpoena.

Mr. Hall: Of the 24 documents referred to, photostats of them are already in the possession of the Government, as a result of their inspection under Rule 34. The last part of this Paragraph IV asks for the contracts and leases pertaining to the station. In compliance with the last part of the paragraph I hand counsel another package of photostats.

Mr. Dixon: Item No. 5 of the second subpoena.

Mr. Hall: Items 1 to 8, in Paragraph V, the Government already has photostats of those documents as a result of the inspection under Rule 34. The latter part of that paragraph refers, together with contracts and leases, Mr. Dixon,

but the only one that is identified there you have already received in response to a previous call of the subpoena; I think call No. 1.

Mr. Dixon: Thank you, Mr. Hall. Item No. 6.

Mr. Hall: You have already received this from my [fol. 394] office, but I am happy to give you another photostat of it, since you have demanded it. It is a photostatic copy of the agreement of October 7, 1930, between Atlas Supply Company and the Standard Oil Company of California, together with letters dated October 1, 1937, October 16, 1944, and October 24, 1944,—photostats in each case.

Mr. Dixon: I ask that these be marked for identification.

The Clerk: Government's 15 for identification.

Mr. Dixon: If the Court please, that completes the call of the Government for the subpoenaed material. I suggest that, since there is a lot of the material subpoenaed that the Government has not seen before, we would appreciate a short recess. I think it would be in the interests of expediting the trial of the case.

The Court: It is 12:00 o'clock anyway. If you were in the midst of the examination of a witness I would not break in, but this is a good time to take the usual recess. Then you will have two hours to look at the material, and see what you want to introduce, and determine whether you want any oral testimony before you do that. So we will take a recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p. m. of the same day.)

[fol. 395] Los Angeles, California, Tuesday, May 4, 1948—2:00 P. M.

The Court: All right, gentlemen, proceed.

Mr. Dixon: May it please the court, we wish to call Mr. Ellis J. McClanahan, as vice-president and director of the Standard Oil Company, chairman of the board of the defendant Standard Stations, Inc., under Rule 43(b).

Mr. Hall: I do not think Mr. McClanahan is director of Standard.

ELLIS J. MCCLANAHAN, called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Ellis J. McClanahan.
The Clerk: That is E-l-l-i-s J.?
The Witness: That is correct.
The Clerk: How do you spell your last name?
The Witness: M-c-C-l-a-n-a-h-a-n.

Direct examination.

By Mr. Dixon:

Q. Where do you live, Mr. McClanahan?
A. Burlingame, California.
Q. By whom are you employed or with what company are [fol. 396] you connected?
A. Standard Oil Company of California.
Q. What offices or positions, if any, do you hold with that company?
A. I am vice-president of the Standard Oil Company of California.
Q. Do you hold any office in Standard Stations, Inc.?
A. I am the chairman of the board of Standard Stations, Incorporated.
Q. Are you an officer or director of the Atlas Supply Company?
A. I am a director of Atlas Supply.
Q. Briefly, what are the duties of your office as vice-president of the Standard Oil Company of California?
A. Well, I am responsible or accountable for the marketing of the products marketed by the Standard Oil Company of California and the certain segments in marketing.
Q. Is it a fair statement to make to say that you are the officer in charge of the marketing and distribution of the petroleum products of the company?
A. That is right, sir.
Q. How long have you been associated with the Standard Oil Company?
A. Since 1912.
Q. What positions other than the one which you now [fol. 397] have have you held with the Standard Oil Company during that period of time?
A. Well, they are rather numerous, Mr. Dixon.

Q. Perhaps we can limit it if you will try and tell us what positions you have occupied in the marketing end of the business.

A. All of my experience with the company has been in marketing, starting as a tank gauger at a wholesale plant in Seattle, and then following as a sales representative on a tanker in Alaska; following that, a branch manager at Astoria, Oregon; later, assistant district manager at Sacramento; and then northern division manager of marketing in the Northwest, with headquarters in Seattle; district manager in Honolulu; and then assistant general sales manager with headquarters in Seattle; and then to the home office in charge of advertising. Following that, I was general manager and president of the Standard Stations, Incorporated; and after that, was made general sales manager for the company before I became a vice-president in charge of marketing.

I think that covers the ground in a general way.

Q. Thank you very much. In your position as officer of the company in charge of the marketing of the petroleum products of Standard of California can you tell the Court approximately how many gallons of gasoline the company distributes through any retail outlets during the year, say, [fol. 398] 1947—approximately? I do not mean the accurate figures.

A. Well, you are dealing in millions of gallons, and I would hesitate to make a statement in that connection.

Mr. Hall: I think you have been furnished with those figures, Mr. Dixon.

Mr. Dixon: We have, Mr. Hall, and I was going to ask Mr. McClanahan if he could estimate in gallons what the approximate gallonage was that the company distributed through retail outlets other than company owned outlets in 1946.

A. Other than company?

Q. Yes. I will hand you what has been marked Government's Exhibit 9 for identification and ask you if that is of some assistance to you in indicating the figures?

A. Yes. I think I can truthfully state that these figures represent the sales by dealers, or the sales by us to dealers in barrels, not in gallons.

Q. I believe by referring to Government's Exhibit 9 the

purported sales to dealers are in excess of 6,000,000 barrels, is that correct?

A. Well, this is not totaled. It would possibly be around 6,000,000 barrels.

Q. That is for the year 1946?

A. That is right.

Q. At 42 gallons to a barrel that would be approxi-
[fol. 399] mately a quarter of a billion gallons of gasoline was distributed by the Standard Oil Company in the year 1946; is that substantially correct?

A. Yes; about 252,000,000 gallons; that is right.

Q. Now by referring to Government's Exhibit 9 you will find there several prices at which the gasoline is reported sold to dealers depending upon, I assume, the grade of gasoline that was so sold. Is it a fair estimate, by referring to that exhibit, to say that the average cost—the average price, rather, of the gasoline so sold to dealers during the year 1946 was approximately 17 cents a gallon?

Mr. Hall: Would you pardon the suggestion, Mr. Dixon? It may be that your misinterpret the portion of the exhibit 9 for identification you are referring to. I believe that those figures with respect to range of posted tank truck prices were designed to indicate a maximum and a minimum.

Mr. Dixon: I see.

Q. Perhaps Mr. McClanahan could tell the court approximately what an average price, tank wagon price, of gasoline sold during that year would be?

Mr. Hall: Where?

Mr. Dixon: Through all of the retail outlets.

Mr. Hall: In the seven western states?

Mr. Dixon: That is right.

A. Approximately, did you say, Mr. Dixon?

[fol. 400] Q. That is right, Mr. McClanahan.

A. In 1947?

Q. '46.

A. In 1946.

[fol. 401] Mr. Hall: If the Court please, I think I shall object to that question. Counsel has been furnished with this statement that shows a range of prices for 1946-1947. It seems to me that that is a matter of mathematical computation, as to what the amounts would be. That is an

average cost obtained, and therefore the question is incompetent, irrelevant and immaterial, and I object to it on that ground.

The Court: I think, however, if we have a witness, or an accountant, or someone with the figures, there can be no objection if he gives a summation of the average, if it can be arrived at. If he can't, he can say so.

A. My answer would be this, Mr. Dixon: That it would be so approximate that I doubt whether it would be of any value to you. There were several price changes in the period 1946-1947 in various localities, and the range, as shown on here, runs all the way from 14 cents a gallon to 28 cents, almost 100 per cent, depending on the point of delivery. The weighted average cost in the metropolitan areas, where your volume is greater, could be a figure between 14 and 27.9 cents.

Q. By Mr. Dixon: My question, Mr. McClanahan, is whether you would be able to give the Court an approximate estimate of what the average price for the total amount so sold would be? I realize there is no yardstick which you can apply, but would 17 cents a gallon be a fair [fol. 402] average, in your opinion?

A. In 1946?

Q. That's right.

A. I would say it would be closer to 18 cents, possibly.

Q. Then if we settle for 17½, is everybody satisfied?

Mr. Hall: I would not be, Mr. Dixon.

Q. By Mr. Dixon: What is your best estimate then, Mr. McClanahan, of what the average price would be? Would it be 18 cents a gallon?

A. Yes.

Q. Thank you. Now, Mr. McClanahan, in your position as vice president in charge of marketing of petroleum products, are you familiar with the relative position of the Standard Oil Company with reference to the amount of gasoline and petroleum products sold, say during the year 1946, as compared with the other companies in the industry, in the western area?

Mr. Hall: Pardon me a moment, Mr. Dixon. Are you now confining your question to gasoline sold through retail dealers?

Mr. Dixon: I did not so state, but that was going to be my next question, Mr. Hall. I was asking first if he knew what the total amount was with reference to all [fol. 403] gasoline sold.

A. To all classes of trade?

Q. That's right.

A. Branded and unbranded?

Q. That's right, whether the Standard Oil Company sells more gasoline than any other company, or whether it sells less, or whether it is first in the industry, third or fifth? Do you know, or can you tell the Court?

Mr. Hall: I object to the question as multifarious, argumentative, and no proper foundation laid.

Mr. Dixon: I think the foundation has been laid, your Honor. I agree that it is multifarious, but I am endeavoring to get to the point here as quickly as possible.

The Court: I will leave it to the witness, can you answer the question in that form, or would you rather have it split up?

The Witness: No, I can answer in that form, approximately.

The Court: We will take the view of the employee, or director, of your clients, as to whether it is too involved or not.

The Witness: That figure would be for the year 1947 or 1946?

By Mr. Dixon:

Q. 1946.

A. Around 23 per cent.

[fol. 404] Q. Is there any other company in the western area, meaning the States of California, Oregon, Washington, Arizona, Nevada, Idaho and Utah, to your knowledge, that sells or distributes more gasoline than the Standard Oil Company of California in that area?

A. In the State of Utah I am sure that the Utah Refining Company markets more products there than we do.

Q. With the exception of that State, then, the Standard Oil Company of California distributes more than any other company, in that area? I mean the sale of petroleum products?

A. Yes, that is quite true, with the exception of Utah, and possibly Idaho. I am not sure about Idaho.

Q. Are you able to state to the Court what the relative position of the Standard of California is with reference to the amount distributed, sold through retail outlets, in this same area?

A. Percentage wise?

Q. That's right.

A. Between 12 and 14 per cent.

Q. Is there any other company that you know of that sells in amounts in excess of the Standard Oil Company in that area, at the retail outlets?

A. I can't answer that truthfully. There may be some States in that area where we would occupy a second [fol. 405] position on the retail trade. I would say, in the majority of places that we are probably in first position, but I would not say that is so in all areas.

Q. Are you familiar, Mr. McClanahan, with the source from which the crude oil is acquired, that is used by the Standard in its refining process of gasoline?

A. No, I am not competent to answer that, Mr. Dixon.

Q. Can you tell the Court about how many refineries that are engaged in the business of refining gasoline from crude oil are operated by the Standard Oil Company of California in the Western area?

A. There are three refineries, all in the State of California.

Q. Are those refineries supplied with crude from any States outside of the State of California, to your knowledge?

A. I am sure they are not.

Q. I believe it is a fact, is it not, that the company itself operates about 1100 retail outlets in the western area?

A. 1090, I think—1092.

Q. In addition to those retail outlets your company also serves and supplies gasoline to approximately 6,000 other outlets, isn't that a fact?

A. That is a fact, sir.

Q. In the course of delivering gasoline to the 6,000 [fol. 406] retail outlets, other than those operated by the company, can you tell the Court what the processes are with reference to taking gasoline from the three refineries and delivering it to the outlets for sale to the consuming public of those outlets?

A. You are speaking now of the dealers?

Q. That's right, the 6,000 dealers you have mentioned.

A. The finished product is taken from the refinery in tankers, or tank cars, of commercial over-the-highway carriers, and delivered in some cases direct to the station, in their underground storage, and in other cases delivered to bulk plants, from which it is redistributed by tank truck or over-the-highway carriers to the respective service stations.

Q. Does Standard secure any gasoline from any other source other than the three refineries in California, which is distributed by it to any of these 6,000 retail outlets in the Western area?

A. Other than California?

Q. That is right.

A. May I have that question again?

Mr. Dixon: I will ask the reporter to read it.

(Question read by the reporter.)

A. Yes, we obtain gasoline from the Utah Refining Company at Salt Lake, to serve that area in the State of Utah. [fol. 407] Q. Is any of the gasoline that you acquire from the Utah Refining Company shipped from that State into any of the other States in the Western area, for delivery to the retail outlets?

A. Yes, some of that gasoline finds its way into Southern Idaho, and I believe to plants in Eastern Nevada. That would be all.

Q. Is it a fact that all of the gasoline which Standard distributes to the 6,000 retail outlets you have mentioned, in the western area, comes either from the three Standard refineries in California, or is purchased by Standard and delivered after said purchase to the retail outlets in the area, from the Utah Refinery in Utah, or Salt Lake?

A. That's just the way I answered it a short time ago.

Q. I believe you testified that some of this gasoline from the refinery was delivered directly to some of the outlets, is that correct?

A. It could be, in some cases.

Q. In direct tank car shipment?

A. Yes.

Q. And in other cases some of it is delivered to what you have referred to as the bulk plant?

A. That is right.

Q. Is this delivery to the bulk plant by tank car, or [fol. 408] sometimes by tanker also?

A. And by truck and trailer.

Q. In other words, it is delivered to the bulk plant by any one of those three methods?

A. That is right.

Q. Will you tell the Court just how this bulk plant operates with reference to taking gasoline from the bulk plant and putting it into a tank wagon for delivery to the retail outlets served by the bulk plant?

Mr. Hall: May I have the question read, please?

(Question read by the reporter.)

A. I don't think that needs any amplification. It is just done that way. The tank truck is loaded at the bulk plant through what we term a filling stem, either by gravity from the tank, if it is full, or by a powered pump into the tank truck. Then it is driven to the respective dealers, and delivered into their underground tanks.

Q. When gasoline is delivered to the bulk plant by any one of the three methods that you have already described, it is a fact, is it not, that it is at that time commingled with whatever gasoline may also be in that bulk tank?

A. Arriving by the same method?

Q. That's right.

A. It could be, and it could also be in a separate tank. We have tanks situated at terminals where we will take [fol. 409] an entire cargo, and that gasoline might be commingled with any previous shipment.

Q. But it is possible, as I have suggested,—it sometimes may be commingled with gasoline that is already in the tank, is that correct, at the bulk plant?

A. It could happen.

Q. Is gasoline being constantly withdrawn from the bulk plant and placed in the tank wagon for delivery to the retail outlets?

A. Well, that depends on the season of the year. We oftentimes build up a reserve during the winter, and these tanks can remain intact for some later period of time before there would be a constant delivery, that you speak of.

Q. It is a fact, is it not, that it may also be just the other way,—when there is a demand for gasoline, it may

be constantly going into the bulk plant, and almost at the same time going out?

A. That's right, it could happen.

Q. Under those methods of distribution that you have described, it is a fact, is it not, that the gasoline that ultimately winds up in the tank of the retail dealer is at all times under the control of the Standard Oil Company until it is delivered to the tank of the retail dealer?

A. No, the title to the gasoline changes hands when it is put into his tank from our tank truck.

[fol. 410] Q. I mean at that time, up until the time it goes into the tank of the retail dealer, it is under the control of the Standard Oil Company, up until that time?

A. You say under control. Do you mean by the owner of the property?

Q. The owner of the gasoline.

A. Yes, they deliver gasoline in their own trucks, or through wholesale distributors, and the title remains in the company until it is put in underground storage.

Q. Do you know whether any of the bulk plants which were mentioned feed any tank wagons that cross any of the State lines in this area we have described?

A. I can't answer that, Mr. Dixon. I don't know specifically where that would be.

Q. It is a fact, is it not, that there are some such bulk plants used by the company in its distributing system?

A. There may be some, but very few. I believe in Spokane, Washington, we do service the Panhandle of Idaho, if that's the point you have in mind.

[fol. 411] Q. Now, Mr. McClanahan, can you state to the court from what sources the company acquires its oil, that is, I am talking now about the oil that is delivered to the retail outlets for sale to consumers in automobiles, motor oil?

A. Well, we are large manufacturers of our own lubricating oils. We have plants to perform that function. And then we do purchase large quantities from different sources to augment that supply and to round out our line, so to speak.

Q. Do you know from what sources Standard acquires, shall we describe it as crude oil, for such purposes, or is it crude oil?

Mr. Hall: Well, that is asked and answered, counsel.

Mr. Dixon: I do not believe it has been, your Honor.

Mr. Hall: The witness has already testified that the crude oil came from California.

Mr. Dixon: I am talking now about the oil that is used, Mr. McClanahan, for use in automotive purposes, in automobiles, rather than the oil that is refined into gasoline. Do you understand?

A. Yes; I understand. We buy crude from many different sources in many different fields in the State of California. We do select certain crudes that have higher lubricant values, from which we manufacture our motor oils.

[fol. 412] Q. Do you acquire any such oil from any sources other than the State of California?

A. Not crude oil.

Q. Do you acquire any oil of any kind that is ultimately delivered to the retail outlets for use in automobiles of the consuming public from any sources other than the State of California?

Mr. Hall: May I have the question read, please?

(Question read by the reporter.)

A. We do purchase certain stocks from other areas, but they are usually blended here before they are sold to the motorist, or treated. They are not sold to the motorist in the state in which they are purchased, if that answers it.

Q. By Mr. Dixon: Can you indicate to the court the approximate amount, total amount, of lubricating oils distributed by your company to retail dealers in the western area during the year 1946?

The Witness: This (exhibit) may help me here.

Mr. Hall: What was the exhibit you handed the witness, counsel?

Mr. Dixon: Government's 9.

A. Around 135,000 barrels of all grades and brands.

Q. And the same number of gallons to a barrel as in a barrel of gasoline?

A. That is right; 42.

[fol. 413] Q. Could you tell the court just approximately the total amount of gallons of such lubricating oil distributed and sold to the retail outlets by Standard Oil Company in the year 1946?

A. It would run around seven and one-half million gallons.

Q. Is any of that lubricating oil packaged, Mr. McClanahan, for distribution to retail outlets?

A. Yes.

Q. And where is that packaging done?

A. Richmond, California; we may do some at El Segundo, but I think most of it is at Richmond.

Q. It is a fact, then, is it not, that all of the lubricating oils that are distributed through the approximately 6,000 outlets in the western area in cans—I mean less than barrel lots—is packaged in the State of California?

A. That is right. As far as I can recall, that is correct.

Q. And Standard transports the lubricating oil in the barrels or the packaged lots to the various distributing points for ultimate distribution to retail outlets in the various states, does it?

A. That is correct.

Q. And during that entire period of time from the packaging of the oil at the two plants that you have mentioned [fol. 414] in the California factories or refineries of Standard until it is ultimately delivered to the retail dealer at the 6,000 outlets we are talking about is it under the control of the Standard Oil Company at all times until so delivered?

A. The company retains title to the oil until the dealer signs the delivery slip at his place of business.

The Court: Well, he means more than legal title. He means actual control. I mean in the sense in which control means dominion over it. In other words, you have it stored in places which you own?

The Witness: That is right.

The Court: And which you have under your complete control, from which it is withdrawn for delivery?

The Witness: That is right.

The Court: Is that what you meant?

Mr. Dixon: That is right. That is what I meant by "control", not merely legal title.

The Witness: That is right. We are responsible and assume control of legal title until it is delivered to the dealer at his premises.

Q. And is it a fair statement to make, Mr. McClanahan, to say that this oil either in barrel or packaged form is more or less in a constant state of flow from the time it leaves the refinery until it is delivered at the retail outlet to the dealer?

[fol. 415] Mr. Hall. That is objected to as calling for a conclusion of the witness.

The Court: Yes; that calls for a conclusion. He should describe that, because that is going to be one of the issues in this particular case. Whether there is an interruption at any time becomes very material, so I do not think the witness should be called upon to give a conclusion. He should state what goes on and whether these elements which constitute this process are repetitious and go on over a period of time, and so forth, and day after day, and so forth. From that, then you can draw the inference whether it is continuous or not, and whether that continuity is limited to state limits or whether it extends to outside the state.

Mr. Dixon: Quite right, your Honor, as to the question. I will ask Mr. McClanahan now, if you will, Mr. McClanahan, to endeavor to describe to the court the journey that this lubricating oil takes from the time it is packaged or either in the quart or barrel or cans at the factories you mentioned until it reaches the retail outlets.

A. It is barreled or placed in quart cans or in five-gallon cans or in two-gallon cans at the plant or filling point such as Richmond, we will say; and also, that includes 55-gallon barrels and half-barrels. And then the oil is transported from the plant or the works possibly to a bulk plant, where it makes an intermediate stop, and then it goes [fol. 416] from there to the purchaser's premises, or it may go directly from the refinery to the purchaser's premises, depending upon the size of the delivery, if it happens to be in carload lots, box cars in the case of barrels—very little of it sold in tank cars—so those two forms of distribution are used direct from the refinery in carload lots or commercial carriers or to a bulk plant from which it is redistributed to the dealer. The dealer purchases it in barrels, cans, or in bulk in some cases.

Q. I believe you referred to the bulk plant as being one of the intermediary stops of the oil from the refinery to the dealer, is that correct?

A. It could be that we have what we call a supply point such as the refinery, and it is shipped from there to a bulk plant at a remote point where it is warehoused, and we usually ship in mixed carload lots where we can effect a more economical method of distribution.

Q. The purpose of the supply plant or the bulk plant, as we may refer to it, is to supply the dealers in the immediate area of that bulk plant with the lubricating oil, is that correct?

A. That is correct; and other products.

Q. Yes; and other products. From what sources does the Standard Stations, Inc. or Standard Oil acquire tires, tubes and batteries which are distributed through some of [fol. 417] these 6,000 retail outlets in this area, Mr. McClanahan?

A. We purchase them from the Atlas Supply Company, a lot of them, not all of them. The majority would be purchased from that source.

Q. From what states outside the western area, if any, are those products delivered from to Standard within the area?

A. Why, none to my knowledge.

Q. In other words, all of the tires, tubes and batteries which are distributed to retail outlets under, say, TBA contracts are acquired from factories or plants within the western area?

A. Within the State of California.

Q. Oh, all within the State of California?

A. All within the State of California.

Q. And from such factories within the State of California can you tell the court where these tires, tubes, batteries, and accessories are shipped by the company manufacturing them?

A. We have several so-called tire warehouses located at strategic points in the western area. I believe there are around—well, I don't know how many there are. I think you must have a record of that. But we have one in Seattle, one in Portland, San Francisco, Phoenix; we have a nice plant here at Compton, and I believe there is one in [fol. 418] Spokane and, I think, in Salt Lake City.

Q. Do you have any warehouses to which these products are shipped in the States of Nevada and Idaho.

A. I don't believe we have. I am quite sure we have not.

Q. And from what sources, if any, are the retail dealers that are operating under TBA contracts in those states served by Standard?

A. Well, the northern part of Idaho such as the Panhandle would be served out of the Spokane warehouse; the Salt Lake warehouse would possibly serve Idaho south of the Salmon River and the State of Utah. As for Nevada, I think most of that would come out of San Francisco.

Q. Do any of these places at which Standard receives its products, that is, the products we are mentioning under the TBA contracts, thereafter deliver the product across state lines to dealers in other states?

A. I just mentioned that the Utah warehouse possibly supplied Southern Idaho, and Spokane would possibly supply northern Idaho and the Panhandle. I think most of the other states would be confined to delivery from the warehouses in their respective states. There would be no point in shipping from the State of Washington down to Portland when you have a warehouse at both points. I don't think there would be any reason for doing it.

[fol. 419] Q. I believe you stated you have been with the company in the sales end since—when was it—1913?

A. About 1912, pretty close.

Q. This may be a difficult question for you to answer, but can you tell the court what your connection or association with the company was in the middle 20's or thereabouts?

A. In 1922 or '3 I was assistant general sales manager in Seattle—no. I was assistant district manager in Seattle from 1923 until 1927, and at that time I was transferred to the Hawaiian Islands as district manager over there. I am pretty sure of those dates.

Q. You were connected with the company in sales capacity at that time, were you?

A. Yes, sir.

Q. Are you familiar with what are called the lease and sublease or license arrangements in effect at that time?

Mr. Hall: What time is that?

Mr. Dixon: The 20's, the late 20's.

The Witness: You said the middle 20's, I believe.

Mr. Dixon: Well, middle or late 20's, Mr. McClanahan.

A. No; I can't recall the types of paper that we were using then. We did have leases. I am not sure about the term—what did you call them—license agreements?

Q. Well, lease or sublease arrangement or license [fol. 420] arrangement.

A. I recall the use of lease and subleases at that time.

Q. Let us call them lease and subleases.

A. All right. I think they were in effect then.

Q. I will hand you what is marked Government's Exhibit 5 in evidence and ask you to examine the same and state to the court, if you can, whether the subleases in use by the Standard Oil Company at that time contained provisions comparable to or substantially the same as paragraph 4 of Government's Exhibit 5?

Mr. Hall: Just a minute. That is objected to as calling for evidence which is not the best evidence, no proper foundation laid, incompetent, irrelevant and immaterial.

The Court: Read the question.

(Question read by the reporter.)

The Court: I have not gathered from the testimony of this witness that he was familiar with the terms of the leases under which stations were operating at that time, and unless that is first shown the question is improper.

Mr. Dixon: I agree with your Honor, but I thought I had already asked the witness by the previous question whether he was familiar with the lease and sublease arrangement and he testified that he was.

The Court: Well, that was too general. It should be [fol. 421] followed by an inquiry as to whether he actually saw leases and knew their terms, before you ask him to compare.

Mr. Dixon: I agree with your Honor. It is entirely quite right. My question was if he knew, and I will withdraw my question if it is objected to on that ground.

The Court: Once a counsel objects to it and the objection is good, I must sustain it.

Mr. Dixon: Thank you, your Honor.

The Court: And besides, as you know, I am a great believer in the rules of evidence. I still insist after nearly 40 years at the bar—38 years at the bar of California, nearly 40, 22 years of which I spent on the bench—I still believe that I can put in more testimony with the aid of

proper counsel in an hour than any administrative body can put in in three days, and I can do it by observing the rules of evidence. And we can do it by observing the rules of evidence. I fail to see that disregarding the rules of evidence gets you anywhere. So I think that the foundation should be laid.

Mr. Dixon: Thank you, your Honor. I will be very glad to do that.

Q. Mr. McClanahan, will you state to the court whether you saw any of the Standard subleases when you were with the company in the 20's in your capacity as selling for the company?

[fol. 422] A. Yes; I saw some of these leases.

Q. Are you familiar generally with the provisions of the leases, subleases, rather, that were used by the company at that time?

A. No; I couldn't answer——

Mr. Hall: What time was that?

Mr. Dixon: In the middle 20's.

The Witness: I couldn't.

Q. Did you negotiate any leases for the company at that time?

A. Well, I might have. I can't recall any specific instance where I did, but I may have.

Q. Could you tell the court just what your actual work was at that time, as far as you can?

A. This is the middle 20's, again?

Q. That is right.

A. I was in Seattle as assistant district manager, and for a considerable period of time I was looking after the Alaska end of our business at that time, where we covered mostly the marine and fishing trade. I believe in '25 or '26 I then was identified more closely with our retail business, and I would say in those two years I was required to direct sales affecting all of our products, including resale. I was not a salesman, however. I was part of the management, and at that time we covered many of our [fol. 423] various channels of sales, besides re-sale.

Q. From your association with the company in the capacities you mention at that time do you know whether the company, that is the Standard Oil Company, employed

any subleases that were entered into with dealers selling Standard petroleum products at that time?

A. Yes.

Q. Did you have occasion to familiarize yourself with any of the forms or provisions of such subleases?

A. Only possibly to the extent or term of the lease and possibly the monetary consideration. Beyond that I did not familiarize myself with the leases.

Q. Do you know whether any of the provisions of any of the subleases so used at that time contained provisions requiring the sublessee to only sell or use Standard petroleum products at the properties subleased?

Mr. Hall: Just a minute. That is objected to as no proper foundation laid, calling for a conclusion of the witness, incompetent, irrelevant and immaterial, and objected to on those grounds.

The Court: I do not think proper foundation has been laid to show some familiarity of this witness with the terms of the leases at the time.

By Mr. Dixon:

Q. When was the first time, Mr. McClanahan, that you [fol. 424] had anything to do with familiarizing yourself with any of the lease forms of the Standard Oil Company?

A. Well, that question is rather general, isn't it?

The Court: Well, he just wants you to fix the date.

The Witness: Oh, I see.

The Court: Then he will start from there.

A. Oh, I see. Well, I became partially acquainted with some of our paper in the latter part of 1938, but not in detail nor word for word.

The Court: The question is: Did you see any number of the papers, paper work, to use an army term, that was being turned out at that time?

The Witness: No; I did not.

The Court: See any of the instruments?

The Witness: No.

The Court: Whatever they were called, by which relationship between the company and the various outlets were established?

The Witness: No. My work did not require me to do that. That was handled by other people.

The Court: Mr. Dixon, if I may make a suggestion?

Mr. Dixon: Certainly.

The Court: I do not know. Probably a week from now I will know more about the case than I do now. You have lived with it.

[fol. 425] Mr. Dixon: It is purely background material, your Honor.

The Court: You are supposed to have lived with this case for months. It does seem to me that there ought to be available other witnesses by whom you can prove these things.

Another thing, if I may suggest, is this: While, in the interests of continuity, it is permissible to go back a period of years, ultimately, because we know of this action, because the Government only seeks injunctive relief as to certain practices and because a chancellor must take the case as he finds it as of the time of trial, and for that reason supplemental pleadings are not necessary in the strict sense of the word, in equity, and won't be necessary even on the law side of the court because we are required to find the facts as they are shown by the evidence, even without the amended pleadings, but because of this particular situation I think we may refuse a certain relief if the court should find that conditions existing at the time of trial do not warrant it, what they did in the past is not of such importance except insofar as it throws light on what they are doing now and throws light on what they might do in the future, because injunctive relief is directed at practices in the future based upon a finding as to what they are doing now.

In other words, we are interested in immediacy, so [fol. 426] that the inquiry as to the background is merely background.

Mr. Dixon: That is right.

The Court: Filling in a picture, as motion picture people would say. We have a drop upon which we throw a picture of the past in order to walk in front of it in the present and act as though we are doing the same thing we were doing in the past.

But at any rate, regardless of that, just merely a suggestion, I do not think this witness has enough familiarity

to warrant taking the time trying to get his recollection as to a thing with which he has only hazy familiarity.

Mr. Dixon: I am sure your Honor appreciates that the witness is called here under 43(b).

The Court: That is right. In justice to you, I know that nobody is objecting to leading him. However, even though a witness is called as an adverse witness under that section, that section, as you know, is nothing novel to us in California. We have had it for 30 years. It is the famous Section 2055 of the Code of Civil Procedure.

I do not know how long you have been in California. As a matter of fact 80 per cent of the things that are good under the New Rules have their counterparts in the California Codes and all the writers, including myself, have admitted the fact. In fact, the first series of lectures I [fol. 427] gave on the New Civil Rules before the Bar here and before the Stanford Law Society in San Francisco, all I did was compare New Rules with the Code of Civil Procedure and found very few that did not have their counterpart.

So I know the scope of the inquiry. But what they are objecting to is to asking for conclusions from a person who does not have sufficient familiarity with that subject to give you even conclusions.

[fol. 428] Mr. Dixon: I quite agree with you.

The Court: In justice to the witness, he is not showing any hesitancy to answer any questions, and I am old enough to assume that a man who comes before this Court, and takes an oath before God to tell the truth, tells the truth. Unconsciously at times he may be biased; he cannot help it. That is why you are allowed this latitude in cross-examination. Sometimes a person is biased and his testimony may be colored. If you have studied modern psychology you will understand that is correct. He hasn't indicated this unwillingness so far to answer, and the only reason you can treat him as an adverse witness is because you called him under the Section, and therefore you don't guarantee what he is going to say. You are just fishing, hoping you will catch something.

Mr. Dixon: Just one other question I would like to ask this witness on that point. Perhaps he can answer it, and perhaps he can't. I don't know.

The Court: All right.

By Mr. Dixon:

Q. Can you tell the Court, Mr. McClanahan, approximately how many non-company operated retail outlets were selling Standard petroleum products in the late '20's?

Mr. Hall: I think we may be able to furnish you with that.

The Witness: This will be a wild guess, Mr. Dixon. In [fols. 429] the '20's?

Mr. Hall: Pardon me. Do you want the witness to give a wild guess?

The Court: Can you approximate it?

The Witness: I think so.

Mr. Hall: If your Honor please, on that point, we can get the accurate information for counsel, if that is what he wants. I don't know whether we can go back into the late '20's or not. I don't like to have the record show speculation and conjecture or guesses.

The Court: Go ahead.

Mr. Hall: My objection is made, your Honor.

The Court: I thought you were offering to give him some information.

Mr. Hall: No, the witness has indicated that his answer would be a guess. I am objecting to it on that ground.

The Court: Let me suggest this: Many a time a witness says guess when he really approximates, that is, he states it approximately, on the basis of any knowledge that he has. He may give an answer, and it does not have to be numerically accurate, because the distance of time is such that he cannot very well answer, unless he had the exact figures before him. Mr. Hall wants to know whether you are guessing, or whether you are basing whatever you are going to say upon your approximation of what you knew? [fol. 430] With that admonition I will overrule the objection. If he guesses too wild, I will strike out the answer.

Mr. Hall: If everybody understands that it is a guess, it is all right.

The Witness: This was the middle of the '20's?

The Court: The late '20's.

The Witness: The late '20's?

Mr. Dixon: Yes.

A. In the seven Western States under consideration?

The Court: Yes, in the late '20's.

A. Around 1800 to possibly 2000 accounts; I would say that that would cover it, approximately.

By Mr. Dixon:

Q. I direct your attention, Mr. McClanahan, to the late '30's, around 1938 and 1939. Can you indicate to the Court the approximate number of retail outlets, non-company operated, in the Western area at that time?

Mr. Hall: There I think we can really give you the figures, Mr. Dixon, and not a guess.

The Witness: It is just approximate.

The Court: If this witness can state, Mr. Dixon, you can accept the offer as to the more accurate information.

Mr. Hall: So long as it is understood that the witness is just speculating, guessing.

The Court: He is giving an approximation. I would not [fol. 431] call it guessing. It is not a guess. I think it is an approximation.

The Witness: Around 8500.

The Court: Let us use a term, and call it a margin of error. What margin of error do you think there is in your approximation?

The Witness: Approximately 10 per cent.

The Court: What do they call it in manufacturing,—tolerance?

The Witness: Tolerance.

The Court: So you would give a margin of error, or tolerance, of 10 percent?

The Witness: That is correct.

The Court: One way or the other?

The Witness: Yes.

By Mr. Dixon:

Q. I believe there are approximately 6,000 non-company retail outlets in the Western area at the present time, is that correct?

A. Serviced by us?

Q. That's right.

A. Around 5900, to be exact.

Q. Is it a fact that since the period you have described, in the late '30's, the Standard Oil has lost approximately, in your opinion, 2,000 retail outlets?

A. Around 2500.

[fol. 432] Q. Were those outlets that were under dealer agreements of any of the types of the five agreements that we have previously referred to?

Mr. Hall: Pardon me. May I have the question read?

(Question read by the reporter.)

The Court: I don't remember. Was he shown the agreements?

Mr. Dixon: I believe that's right. I think the witness—I am presuming he is familiar with the five types of agreements.

The Court: I don't remember that he was shown them.

Mr. Dixon: I don't think he was.

The Court: Have you seen the three types of agreements marked here for identification, I think 1 to 5, which Mr. Hall brought into court, and presented to counsel? I think you had better withdraw the previous question, and let my question stand as preliminary, because I did not hear it. Slightly, at times, my thought may be momentarily elsewhere, and I may have overlooked a question, but I don't think I heard any question relating to his knowledge of the instrument.

The Witness: What is the question?

The Court: Let me ask you one preliminary question: Now you have examined Exhibits 1, 2, 3, 4 and 5, which are forms of instruments designated by such numbers.

[fol. 433] The Witness: Yes.

The Court: The question propounded will relate to those five instruments. Reframe your question, please.

By Mr. Dixon:

Q. Can you state to the Court, Mr. McClanahan, whether the approximately 2,000 stations, retail outlets, we will call them, that you estimate the company lost since the latter part of the '30's, were represented by outlets covered by agreements of the types you have just referred to, namely, Government's Exhibits 1 through 5, inclusive.

A. Yes, I can state that a great number of the 2,000 were covered by some form of paper, some of which may have been covered by one form or another form. I can't say that all five forms were used on one account, but some

one of the forms might have been used on all of the accounts, or a majority of them.

The Court: But you can't tell that far back?

A. No.

The Court: How many of the particular five were used, or in how many instances?

A. I would say a great number of these were covered by some form of contract,—a supply contract.

The Court: Let me ask you this question: Do you know of any instance where a relationship was established,—I am not going to call it by any name, but I will use a word [fol. 434] such as relationship, because it is a generic term. I don't want to call it a lease, an agency, or anything else, because that is one of the problems in the lawsuit. I don't want to give it a name at the present time. Do you know of any form of relationship that was established between Standard and one of these outlets which was not covered by a written agreement?

Mr. Hall: Your Honor is referring to this time?

The Court: Yes, 1938 and 1939.

The Witness: No, I can't recall one relationship.

The Court: Put it the other way. I will ask you a leading question: Is it a fact, or is it not a fact that wherever any relationship was established, it was done not by oral agreement, but by written agreement?

The Witness: In the majority of cases.

By Mr. Dixon:

Q. It is a fact, is it not, Mr. McClanahan, that the Standard sells a considerable number of outlets with which it has no written agreement?

The Court: I will allow the question, but I don't see any materiality.

Mr. Dixon: I said written agreement.

The Court: That was not your question.

Mr. Dixon: May the reporter read the question?

(Question read by the reporter.)

The Court: I will allow the question, but if this calls [fol. 435] for the answer which I think it does, it would not be material, because we are not concerned by sales in general. I assume the Standard Oil Company sells its

products to others. I don't think it would be doing the amount of business it does, if it confined itself to these gasoline outlets. But they are not charged in the complaint as monopolistic tactics, and as I understand, no charge of fixing prices is involved in this lawsuit. I can't see the materiality of the particular question. Are you objecting to it? I have no objection to its being answered. If you are objecting technically, I will sustain the objection.

Mr. Hall: No, your Honor, I was not objecting to it. But I think it is strange that counsel should put a question like that when the very documents he introduced this morning disclosed the answer in accurate form.

The Court: Maybe he wants to give me a preview of what is in the documents, because I haven't looked at them yet.

Mr. Hall: I have no objection.

The Court: You may answer.

The Witness: You used the term "considerable number." I can't give it to you exactly. I believe it is around 750 accounts, without a supply contract.

By Mr. Dixon:

Q. That is, without a written contract?

A. That is right, a written contract obligating us to supply them.

[fol. 436] Q. Do you sell any of those outlets——

The Court: Let me ask this question. The witness put in a clause there, which I would like to have clarified.

Mr. Dixon: Certainly.

The Court: What do you mean, without any obligation to supply?

The Witness: I believe he used the term "open accounts." Is that correct?

The Court: That's right.

The Witness: That means that these accounts are open to the end that they have not an assured supplier under obligations to supply them. And the question put to me, as I understand it, was that we had a considerable number of those accounts. We had 750.

The Court: Am I to take your answer to mean this, then: That you are not under obligation to supply them, and

they are not under obligation to confine themselves to you?

The Witness: That is correct.

The Court: In other words, they call on you when they wish to, and if you can supply them consistent with your other needs you are going to do so, is that correct? Is that your idea, or is it not?

The Witness: Partially right, sir. They call upon us if they need supplies. We have a supply arrangement with them, but we are not obligated to continue it.

[fol. 437] The Court: Have they the right, when you cannot supply them, for instance, to call upon others?

The Witness: That is correct.

The Court: In other words, the obligation which is contained in these contracts which compels them to get from you enough to supply all their demands— I have forgotten the phraseology.

The Witness: Requirements?

The Court: Their requirements, did not exist as to the outlets about which you are talking now, is that correct?

The Witness: That is correct.

By Mr. Dixon:

Q. Mr. McClanahan, will you state to the Court whether you would sell any Standard gasoline to any such station under an open account, or oral arrangement, as you have called it, if there was any other gasoline dispensing pump at that same outlet?

A. No, we would not.

Q. So that as to these accounts with which you had no written agreement, it is a fact, is it not, that as long as the Standard Oil furnishes these accounts with gasoline, that the only pump at that retail outlet is the Standard Oil pump, is that correct?

A. That is right, sir.

Q. In your capacity as sales manager, or in charge of sales, and the distribution of petroleum products, are you [fol. 438] familiar, Mr. McClanahan, with the yardsticks that are applied by the Standard Oil Company in selecting service station retail outlet sites?

A. Does that conclude your question?

Q. Yes.

A. In a general way. We have specialists, or experi-

enced men, who do that for us, but in a general way they are directed to effect their efforts to gain the representation at points where we haven't what we consider adequate coverage, both on the highway, and in the communities and any subdivisions. Further than that, there is a constant change going on in the retailing of petroleum products, in that their leases expire, highways being moved, and various other physical changes that are taking place, which require a constant search for, you might say, relocating existing stations, for acquiring new sites, and a very careful study is made as to our demands for our representation.

(Short recess.)

[fol. 439] The Court: All right, Mr. McClanahan, resume the witness stand.

By Mr. Dixon:

Q. It is a fact, is it not, Mr. McClanahan, that the number of service stations that may be operated within a given area is limited? Do you understand my question?

A. I think I do, Mr. Dixon. It is limited by adequacy of distribution, if that answers it. We haven't anything in the way, we will say, of an exact number of units in a community as a limit. It depends on the growth of the community, the change in buying habits, the change in highways. Do I understand the question correctly?

Q. I think so, yes. And that the selection of such sites, generally, depends upon the amount of motor traffic that passes a particular site or area during a given period; is that one of the criteria applied?

A. Traffic is one, accessibility of the site is another, and the mobile buying habits of the public is another. It depends on the class of trade that you are catering to. On the areas that have fast-moving travel we find that visibility is very important, so they can see the station before they get to it. In a community it is not so important because they know where the station is located through continuous observation. Traffic is only one point.

Q. Now directing your attention for a moment to [fol. 440] Government's Exhibit 9, I will ask you to examine the same and refer thereto to the range of posted prices for automotive oils delivered to retail outlets in the

western area. Will you examine the same and state to the court, if you can, what an approximate average price per gallon would be for the lubricating oils involved in that compilation?

A. You are speaking now of the wholesale price that the company charges the dealer?

Q. That is right; yes.

A. For our naphthenic base oils manufactured entirely here in California the range would be—the price would be approximately 60 cents a gallon. For Pennsylvania oils manufactured in the east but possibly blended here the price would be approximately 75 to 78 cents a gallon. On our ~~non-solvent-treated~~ western oils manufactured here the price would be approximately ~~35 cents a gallon.~~ That is the price to the dealer.

Q. Now coming back to the subject of service stations, Mr. McClanahan, it is a fact, is it not, that these retail outlets also furnish potential market for purchases of automotive accessories by motorists?

A. Yes; they are a potential outlet for what we term allied merchandise, allied petroleum products.

Q. And such products include tires, tubes, batteries, [fol. 441] and other automotive accessories, do they?

A. Generally, the immediate needs or essential needs of a motorist; that is correct.

Q. It is a fact, is it not, that Standard has used not only its own company-operative retail outlets but also the independent dealer outlets for the source for the sale of such automotive products and accessories since 1930?

A. That is right.

Q. From your experience as vice-president in charge of sales and distribution of petroleum products for the company is it not a fact that many motorists who enter the retail outlets at which Standard products are sold request petroleum products such as motor oils other than those sold or manufactured by Standard?

Mr. Hall: Just a minute. That is objected to as calling for a conclusion of the witness, no proper foundation laid, incompetent, irrelevant and immaterial.

The Court: Read the question.

(Question read by the reporter.)

The Court: Overruled. If you know.

A. I am quite certain that that does not prevail.

By Mr. Dixon:

Q. Do you of your own knowledge know of any instances of such situations occurring which have come to your attention, Mr. McClanahan, as vice-president in charge of sales of petroleum products for the company?

[fol. 442] The Witness: Is that question completed?

The Court: Yes. You may answer.

Mr. Dixon: That is correct.

The Witness: Would you mind repeating it, please?

(Question read by the reporter.)

A. No, I do not, with this exception: That shortly after the war the supply of Pennsylvania oils was rather short and we had some difficulty in supplying our customers' demands, our own customers, with that particular product. But I can't recall any instance where they came into our stations and asked us for other products.

Q. That is products other than those manufactured and sold by Standard?

A. That is correct.

Q. In the petroleum field?

A. That is right.

Q. Or the petroleum products field? Pardon me.

A. That is right, sir.

Q. How long has Standard been selling tires, tubes, batteries and automotive accessories to independent dealer outlets to which Standard petroleum products are sold?

A. 1936 to '8 is when, I believe, they merged all the sale of those products through that class of outlet.

Q. And was 1938 the first time that the company started to use the type of agreement which has been marked [fol. 443] Government's Exhibit 4?

A. To my knowledge this was generally used after that period.

Q. Was there any other type of agreement which was in use by the Standard Oil Company which covered the distribution of tires, tubes and batteries to retail independent outlets prior to that time, to your knowledge?

A. Yes. I recall that we had a distributor's agreement for certain retail outlets prior to that time.

Q. So that there are in effect at the present time, are there not, two types of agreements which relate to and deal with the distribution of tires, tubes and batteries through the independent retail outlets at which Standard petroleum products are sold?

A. I can't answer that exactly. I don't know.

Q. Directing your attention to all of these agreements, namely, Government's Exhibits 1 through 5, inclusive, it is a fact, is it not, Mr. McClanahan, that all of these agreements which may be entered into with independent dealers in the various states in the western area require the approval of the main office of the Standard Oil Company of San Francisco before they may be executed——

Mr. Hall: Now, just a minute.

By Mr. Dixon:

Q. —and become effective?

Mr. Hall: Just a minute. That is objected to, if the [fol. 444] court please, as assuming facts contrary to evidence that counsel himself has already introduced. He refers to five types of contract now in use. The exhibit that he offered this morning, Exhibit 6, states very clearly that the distributor agreement, the use of that was discontinued in September, 1944.

The Court: Remember he is cross-examining this witness and therefore he is not bound by the testimony, and you may elicit questions for the purpose of laying foundation for contrary testimony, under our rules. He is not vouching for the testimony of this witness. This witness is being examined as an adverse witness under that particular section, which means that he can contradict him. So if he wants to elicit a contradiction between this and something else, he may do so and then choose, later on, to rely on the wording of the agreement or to rely on the statement of the witness also.

Mr. Hall: It would seem to me, your Honor, as if he was attempting to impeach the document that he himself offered this morning by the testimony of the witness.

The Court: He is not impeaching. The section under which the witness is called is very explicit.

Mr. Dixon: I have it here, your Honor.

The Court: All right. I have it. Is very explicit. This is 43(b):

[fol. 445] "A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief."

So that is broad, broader in fact than our Section 2055 of the Code of Civil Procedure, although in substance the courts have so ruled in interpreting our own statute.

All right; you may answer.

The Witness: Will you read the question again, please?

(Question read by the reporter.)

A. As for the leases, they would be executed in San Francisco. There may be one or more here that could be executed in the field, such as Exhibit—it is No. 3 here, the petroleum products and equipment agreement. I would say generally they would be executed in the home office, [fol. 446] with the possible exception of the one that I mentioned.

By Mr. Dixon:

Q. Now, do you, that is, does Standard sell any tires, tubes and batteries to any independent dealer within the 6,000 outlets that we have before referred to that may have a TBA type of contract—or, withdraw the question. Does Standard sell any tires, tubes and batteries to any independent dealer to whom Standard sells petroleum products without that dealer entering into a written TBA agreement of the type of Exhibit No. 4—2 and 4, I guess?

A. Yes. According to my information, we may have a few of these whom we sell currently on the open market basis, without such an agreement, but they would be very few.

Q. In other words, it is a fact, is it not, that substantially all the tires, tubes and batteries that are sold to independent dealer outlets are sold to dealers who have the type of contract referred to as Exhibits 4 and 2?

A. They are consigned to them and then individually sold; that is right.

Q. Will you state to the court how the Standard determines the amount of products, that is tires, tubes, and batteries, which it will purchase for the dealer outlets, for distribution to the dealer outlets?

A. How it determines the amount?

Q. That is right.

[fol. 447] A. Well, that is based on a very carefully maintained historical record of their previous purchases and estimates on what we consider their future requirements.

Q. In other words, when entering your orders for tires, tubes, and batteries for distribution to retail outlets handling the TBA and distributor type of agreement you take into consideration the prospective requirements of all of the outlets under that type of contract, do you not?

A. Yes, sir. We protect them on a future supply and order our requirements accordingly.

Q. It is a fact, is it not, that when placing these orders the Standard contemplates the ultimate delivery of the tires, tubes and batteries to either the company-operated outlet or the independent dealer outlet which is subject to the TBA type or distributor type of contract, Government's Exhibits 2 and 4?

Mr. Hall: Just a minute. That is objected to as calling for a conclusion of the witness, no proper foundation laid, irrelevant and immaterial.

The Court: Overruled.

The Witness: Who is overruled, Dixon or Hall?

The Court: No. When I say "overruled" it means that you may answer.

The Witness: Okay. All right.

The Court: The objection is overruled.

[fol. 448] A. No; we don't segregate the tires in our warehouses as to where they are eventually sold. They are stocked and inventoried, and then the separation takes place when the shipment is designated.

By Mr. Dixon:

Q. It is a fact, is it not, Mr. McClanahan, that any stoppage of the tire, tube or battery in any one of your seven warehouses that you have referred to is merely a temporary stopping place for the product until it can be conveniently delivered to the dealer outlet?

A. That is right. They are warehoused there and redistributed from that point to the purchaser.

Q. And it is a fact, also, is it not, that the ultimate destination of all the tire, tube and battery products that are ordered for the Standard dealer, that is the dealer, that is the independent dealer outlet or is the company-operated retail outlet?

A. Not entirely, Mr. Dixon. We do sell tires and batteries to trucking accounts who might take delivery direct from the warehouse and it may not go through a dealer.

Q. What percentage of the business which Standard does in the sale and distribution of tires, tubes and batteries is of that character?

A. Well, considering the non-dealer sales, the non-automobile dealer sales, and considering the airport dealers, the marine dealers, the trucks who may buy at the ware-[fol. 449] house, and adding to that, if we may, the products that our own company uses on its equipment and does not purchase, except takes delivery from our warehouse, it would probably represent roughly 10 per cent.

Q. Now, it is also a fact, is it not, Mr. McClanahan, that there is a constant movement of these products from your warehouse to the dealer and company-operated outlets?

A. There is now. During the war we just did not have any products to move.

Q. Do you have any contracts of the type of Government's Exhibit 4 that do not require the dealer who executes such contract to also purchase his full requirements of gasoline and petroleum products from Standard?

The Witness: Read that question, will you, please? May I ask to have the question read?

Mr. Dixon: Surely.

(Question read by the reporter.)

A. To my knowledge we have not.

Q. In addition to tires, tubes and batteries which are sold to independent dealers under types of contracts Gov-

ernment's Exhibits 2 and 4, other types of merchandise in the line of automobile accessories is also sold to such dealers, is it not?

A. That is right.

Q. And it is a fact, is it not, that many of such [fol. 450] products are shipped in to various warehouses or distribution points maintained by Standard in the states mentioned from states outside the states we have previously referred to as the western area; is that not true?

A. You are referring now to products other than tires, tubes and batteries?

[fol. 451] A. That is right. Many of them originate in States outside of the seven Western States.

Q. And these accessories are handled in substantially the same manner by Standard, insofar as distributing them is concerned, as are the tires, tubes and batteries, are they not?

A. I would say substantially, but not entirely.

Q. I direct your attention to the five types of contracts, Government's Exhibits 1 through 5, inclusive. Do you know of any financial aid that has been given to any of the independent dealers who signed any contracts of that character with the Standard Oil Company?

A. Any specific instance?

The Court: No, the general policy.

The Witness: Yes, I would say that we possibly have several dealers that we have assisted financially, who may have one of these contracts.

By Mr. Dixon:

Q. It is a fact, is it not, Mr. McClanahan, that in many of such instances Standard has in fact made gifts to many of the independent dealers executing such contracts as part of the transaction?

A. No, that is not true, Mr. Dixon. We just don't make gifts to anybody.

Q. Let us put it this way, then: It is a fact, is it not, that with the dealers which execute these types of [fol. 452] contracts, Standard frequently makes money available to them for the purpose of setting up or establishing a business, which is not in fact repaid to Standard by the dealer?

A. I am not trying to circumvent your question, but I am trying to give you a factual answer. Every piece of assistance that we have rendered to these dealers that I know of has been with the thought of helping that dealer to become a better merchant, in order to better serve the trade; and when he becomes a merchant of that type we are repaid in some instances for our loan, but they are not gifts.

Q. I hand you what has been marked for identification as Government's Exhibit 16, and ask you if you recall ever having seen that document?

A. No, I can't recall seeing this particular document. I may have. I see it's addressed to me. We pass on a lot of documents. This is dated 1945. It may have come to my attention, but I can't specifically say.

Q. I realize you can't pick out any particular transaction, Mr. McClanahan, at this late date. Will you examine the document, and state to the Court, if you can, whether the difference between the item marked "Loan" in the amount of $4,000, and the item marked "Repayment, $2500, at no interest, in 120 equal monthly payments" represents, in fact, a disbursement to the party involved in this proposal of that amount of money?

[fol. 453] A. The difference here between the $4,000 and the $2500 represents a total of $1500, or $12.50, which I would say was value received for the representation at this particular point.

Q. In other words, from your examination of that exhibit it is a fact, is it not, that insofar as the information contained therein is concerned, there is no provision in the proposal for the repayment to Standard by the proposed dealer of the $1500 differential between the $2500 and the $4000 referred to?

A. That is correct, except in this way: That he used the loan to build the station on which we obtained the lease, so we have a certain equity in the improvements of the station, in that amount, regardless of whether it was paid back or not. This man built a station. It was equipped. We assisted him financially, and we had the value of his representation at Kamos, Utah.

Q. The $1500 differential, then, was paid by the representation of the proposed dealer there of the Standard products at that city, is that correct?

A. That would be part of the compensation, I would say, for the representation at that point of the station be built.

Mr. Dixon: Government's Exhibit 16 is offered in evidence.

[fol. 454] The Court: It was payment for the good will which was acquired by him in selling your products, is that right?

The Witness: Your Honor, we have cases similar to this, not many, where we attempt to give the dealer a stake in the business, trying to have him operate a business with some proprietorship and some pride of ownership, and in that way we have a proper representation. Here is an individual who perhaps did not have the funds to build the station. He wants to go in business, and the site is one we would desire from the standpoint of serving the public, and we assisted him financially, and rather than have him pay back the entire loan we perhaps negotiated this on the basis of a longer lease, better representation, in considering all the terms of the transaction. That $1500 was only one feature. There may have been other things that rounded out the transaction between the dealer and the company.

The Court: What I am trying to find out is what your consideration was for forgiving him $1500.

The Witness: These things I mentioned. We did not have representation at that point, where it might have cost us ten thousand or fifteen thousand dollars to build a station.

The Clerk: Is this admitted?

The Court: Admitted.

The Clerk: 16 in evidence.

By Mr. Dixon:

[fol. 455] I hand you what has been marked for identification Government's Exhibit 17, and ask you to examine that exhibit, Mr. McClanahan, and state whether or not you are familiar with the transaction referred to in this document.

A. I can't recall the instance when this came to my attention. That was three years ago. It apparently received my consideration, because I notice it is addressed

to me, but I certainly can't say that I didn't see it, but I don't recall specifically this particular instance. I probably did.

Q. In other words, was that the type of example that you have occasion to consider frequently?

A. Not frequently. Very infrequently.

Q. By referring to that exhibit, Mr. McClanahan, can you state to the Court whether or not the difference between the item marked "Loan, $10,000," and the item marked "Repayment, 60 per cent over a period of five years, no interest," represents in fact a grant to the dealer executing any agreements made pursuant to that exhibit and arrangements, of approximately $4,000?

A. It's first of all a ten-year assurance; not five. The assured tenure is for 120 months. That is a ten-year period. And the total transaction, weighing the whole thing, and not just the payment of that one particular item, [fol. 456] but the value of the extended tenure at this particular point warranted in our opinion at that time a payment of only 60 per cent of the total loan, and the absorption we made can be looked upon as having value from the standpoint of representation, or even building a station at that particular point where we needed representation.

The Court: How was the amount absorbed handled? Was that profit and loss? I know you have nothing to do with accounting, but do you have any idea?

The Witness: I do not know. I can say, at the time there would be no motive in having it from an accounting standpoint at all. It was done primarily to negotiate the best arrangement we could with this particular dealer.

The Court: I did not ask as to the motive, but how it was reflected on the books of the corporation.

The Witness: I don't know.

By Mr. Dixon:

Q. The $6,000 amount of the $10,000 amount involved there, which went to the dealer, was carried as a non-interest bearing loan, the amount thereof, namely, $6,000.00, being due from the independent dealer, who entered into that arrangement, Mr. McClanahan, is that correct?

A. It says so here, sir: no interest on the amount he was to return.

Q. It is a fact, is it not, that there were several other transactions of that type and character, in which loans [fol. 457] were made, the full balance of which was not repaid by the proposed dealer, and which loans were non-interest bearing in nature?

A. There would be very few non-interest bearing loans; very few; and the total number of loans, interest bearing or non-interest bearing, would amount to very few in number.

Q. Would the fact that it was an interest bearing or non-interest bearing loan depend upon your ability to make a deal with the proposed dealer on that basis?

A. Combined with the competitive activities at that time, which has a great influence on each one of these particular transactions.

Mr. Dixon: Thank you. We will offer Government's Exhibit——

Mr. Hall: Pardon me a minute. This exhibit that you have just offered in evidence, Exhibit 16, is not a complete document. The original of that was exhibited to you, and it had a second page. The photostat which has now been offered in evidence is minus the second page.

Mr. Dixon: We have no objection to it all going in. If counsel wants to put it in, all right. We have no objection.

Mr. Hall: It is not a complete document as it stands.

The Court: Let me look at it. I think while it is true that if a document is lengthy you may offer only a portion of it, when you are dealing with a memorandum, and the [fol. 458] memorandum consists of several pages, it is not customary to offer a part of it only.

Mr. Dixon: We have no objection to it going in.

The Court: What is the other one?

Mr. Hall: The other one is very informative.

The Court: Where is it?

Mr. Hall: I have a copy of it.

The Court: Give it to me.

Mr. Dixon: Substituted for this.

The Court: I will substitute that for the other.

Mr. Hall: I think the witness should be shown the second page of that document.

The Court: Yes, because it bears a signature. Will you put your stamp on this, Mr. Clerk?

Mr. Dixon: Have you finished with 17?

The Witness: I have.

Mr. Dixon: Government's Exhibit 17 is offered in evidence.

The Court: It may be received.

The Clerk: 17 in evidence.

The Court: He is merely giving the second page.

Mr. Hall: Let me have the first page.

The Court: He wants that, because he is giving you the second page.

Mr. Dixon: I think that is all of this witness, your [fols. 459-460] Honor. We offered, I think the record will show, Exhibit 17 in evidence, and it is in evidence.

The Court: All right. You may step down. You may tomorrow, if you desire to, examine your witness at the present time. It is perfectly all right. I always take the view that you have a right to examine him on cross-examination, if you want to do it at the present time rather than later, and sometimes it avoids repetition.

Mr. Hall: No, your Honor, I can wait until the morning.

The Court: I don't mean now, but do it tomorrow rather than defer it. You may call him back later on as your own witness. There is less opportunity of repetition if you do it while the testimony is fresh in your mind. You may want to have him amplify certain matters he has testified to, after you return. I take the view that when a witness has testified, that is evidence in the case, and while he was called by your adversary, you cannot later on recall him, and go over such material as to which he has already testified.

Mr. Hall: Yes. He can be called on another aspect of the case, I assume?

The Court: Oh, yes. We will take an adjournment until tomorrow morning.

(Whereupon, at 5:00 o'clock p. m., an adjournment was taken until Wednesday, May 5, 1948, at 10:00 o'clock a. m.)

7

[fols. 461-462] IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

HONORABLE LEON R. YANKWICH, JUDGE PRESIDING

No. 6159-Y-Civil

UNITED STATES OF AMERICA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., Defendants.

REPORTERS' TRANSCRIPT OF PROCEEDINGS

Los Angeles, California
Wednesday, May 5, 1948

APPEARANCES:

(As heretofore noted.)

[fol. 463] Los Angeles, California,
Wednesday, May 5, 1948—10:00 A. M.

The Court: Proceed.

ELLIS J. McCLANAHAN, a witness called by the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

Cross-examination.

By Mr. Hall:

Q. Yesterday, Mr. McClanahan, you mentioned that gasoline from a refinery in Salt Lake City was distributed in Utah and in a part of Idaho. Do you recall that testimony?

A. Yes, sir.

Q. I will ask you if it is not a fact also that gasoline from Texas is distributed in the eastern area of Arizona?

A. That is correct.

Q. Now, it is a fact, is it not, that the Standard Oil Company of California distributes for sale three grades of lubricating oil, namely, the RPM, the Standard Penn, and the Zerolene.

A. That is correct, sir.

Q. All of those oils are blended, are they not, either at the El Segundo refinery or at the Richmond refinery, [fol. 464] both refineries being in California?

A. Yes; I recall stating that yesterday, that we purchased the bright stock and the neutrals and blended them in either Richmond or El Segundo.

Q. The Seguro refinery, located in Bakersfield, does not manufacture lubricating oil, does it?

A. No, sir.

Q. It is true, is it not, that irrespective of the place where an ingredient of the lubricating oil may come from all the lubricating oil distributed by California in the seven western states is blended or processed or manufactured at either El Segundo or Richmond?

A. That is correct.

Q. The Standard Oil Company of California has a marine terminal located at Point Wells near Seattle, Washington, does it not?

A. Yes, sir.

Q. And it is a fact, isn't it, that certain bulk stocks transported to that plant are barreled at that plant?

A. Yes; we barrel certain products at Point Wells or Richmond Beach.

Q. And among those things that are barreled is lubricating oil?

A. That is right; RPM, Standard Penn, and Zerolene.

Q. Standard Oil Company has also a plant located at [fol. 465] Willbridge, near Portland, Oregon, doesn't it?

A. That is right, sir.

Q. And there there is a barreling process goes on with respect to bulk stocks that come into that plant; isn't that true?

A. That is right, sir.

Q. Both Willbridge and Point Wells are marine terminals as well as storage plants and barreling plants, are they?

A. That is correct.

Q. Yesterday, in mentioning the location of, I believe you called them tire warehouses—another name sometimes used is "accessory warehouse", isn't it?

A. Yes, sir.

Q. In mentioning the location of accessory warehouses, I think you neglected to mention Fresno. There is an accessory warehouse at Fresno, is there not?

A. Yes. I inadvertently overlooked Fresno. We do have an accessory warehouse at that point.

[fol. 466] Q. I show you Government's Exhibit 6, and the Item B thereof, and I read to you this portion of Item B:

> "Use of the Distributor Agreement (like or substantially similar to Form SS-130-E) preceded use of the Dealer Agreement TBA. Use of the Distributor Agreement was thereupon and thereafter discontinued."

And then the exhibit goes on to point out that as of March 12, 1947, a total of 556 Distributor Agreements were outstanding, and that as of the present time that number has been reduced to 232. Are those facts correct, according to your understanding?

A. Yes.

Q. In other words, the practice with respect to these distributor agreements in, say, September, 1944, just has not been a form that has been used by the company?

A. No, it was superseded by the dealer agreement.

Q. It was superseded by the dealer agreement, TBA?

A. That is correct.

Q. So wherever an occasion occurs for an agreement of that nature, dealer agreement TBA is now used?

A. That prevails, yes, sir.

Q. When tires, tubes and batteries, or other automotive accessories, come into an accessory warehouse, are they earmarked in any way for the dealer?

A. No, they are all either stacked or piled or ware-[fol. 467] housed together by grades and sizes, irrespective of their ultimate destination.

Q. I show you Government's Exhibit 16, and I call your

attention to the second page of that exhibit, and to the first paragraph on that page. This page was not shown you, I think, yesterday. It was evidently inadvertently omitted when the Government introduced the first page. I will read you the first paragraph on page 2:

"Ordinarily we do not like to consider making a loan where full return of the principal is not received."

I will pause there, and ask you if that is the policy of the company, as stated in that sentence?

A. It is.

Q. And has been for a number of years?

A. Yes.

Q. I will continue with the paragraph reading:

"However, the Salt Lake District has advised that the Utah Oil & Refining Company, who at present do not have any representation at Kamas offered our proposed lessor, a week after our deal was tentatively concluded, $3,000 toward the construction of his service station and garage, with 100% absorption with no note or mortgage as security."

My question to you now is this: Was that circumstance, [fol. 468] as reported to you in this memorandum, a material influence prompting your acceptance or approval of this investment?

Mr. Dixon: I object to that, your Honor——

The Court: I think the vice of that question is "A material influence," because it brings in a speculative element. The question is whether there was any influence. Modified in that way, I will allow it to be answered.

By Mr. Hall:

Q. You have heard the last part of the paragraph which I have read to you, Mr. McClanahan.

A. I have.

Q. Was that circumstance that I have read to you concerning the Utah Oil & Refining Company a circumstance prompting your acceptance or approval of this investment?

Mr. Dixon: Same objection, your Honor.

The Court: Overruled.

Mr. Dixon: On the ground that it is wholly immaterial.

The Court: If it is immaterial, then the entire inquiry is immaterial. Certainly, motive is important; otherwise, the fact that they paid a bonus, as it were, to acquire a particular site, does not mean anything.

Mr. Dixon: The position of the Government, as we have indicated previously, is that these agreements in themselves are illegal per se.

The Court: I understand that. I may say right now I don't agree with you, because it goes right in the teeth [fol. 469] of the case I read to you yesterday. You will have to show me later authorities which repudiate that doctrine in that case in 299 U. S., Pick case, which says specifically, that agreements, the object of which is merely to confine a person to one source of supply, are not per se violative of the Sherman or the other Act, but they may be so if they actually result in a substantial restriction on interstate commerce.

The mere fact that in itself it denotes that a man loaned money, and then forgave part of it, is not a violation of any law at all. You have a right to secure business, and pay for the privilege. In fact, the oil business is notorious for what is called overriding things, overriding costs, overriding royalties, and so forth. There is such competition among them that they resort to all sorts of practices in order to get business.

But we are not trying here the practices of the oil industry. We are trying here a simple question of whether this particular form of controversy is violative of the two statutes, and you have brought in this fact merely to show the working of the arrangement.

In itself there is absolutely nothing wrong for a man to pay a bonus to get something he wants, unless it is in violation of a law, such as fixing prices, and price control has been abandoned for several years, so that in peace times it [fol. 470] never has been a violation of law.

In view of that fact, if the fact of the loan is at all material, certainly the particular inquiry is material, just as the question I asked yesterday, and that is, as to the reasons which were behind the reduction of the loans.

Mr. Dixon: May I state to your Honor the position of the Government in this case is as I have pointed out previously, that in the context and use of these contracts, and the scope and extent to which they are used; as the evidence,

I believe, in part already indicates that in such use of this type of contract, which completely excludes all competition from these outlets, from other companies engaged in the same business as the defendants here, it is the contention of the Government that under those circumstances the contracts are illegal per se.

The Court: I understand your contention. But you don't want me to stop the lawsuit right now, and give you judgment on the basis of the direct examination of one of the witnesses, do you?

Mr. Dixon: No, your Honor. Our objection to this line of questioning, so the record may show it, is that the motive of the defendants in entering into this type of contract, so-called economic justification for it, is wholly immaterial.

The Court: I understand the phrase "economic [fol. 471] justification," but that is not the point at all. But remember this is a court of equity, and I am sitting here as a chancellor, and we exercise the power which the English chancellor has exercised for hundreds of years, except that by our Constitution and laws we take the chancellor powers as they existed at the time of the adoption of the Constitution, and from then on we are on our own, as it were, because our own courts have modified the rules.

In view of the scope of the relief asked in this case,—you are not asking me merely abstractly to say this is an illegal contract, and slap Standard Oil on the wrist, and say: Go along; don't do it any more. You are asking me to order them to sever their connections by getting rid of their properties. You are asking me to abridge the contracts they may have entered into for a lease of these properties, and the like.

When the scope of the question is so broad, then the background of the controversy is of the utmost importance to the chancellor, in determining the extent of the remedy. There is another very important reason, and that is this: Laches do not apply to the Government. If a private individual came into court and sought the aid of the court to evaluate a contract, the existence of which he knew, or should have known, and to cause the abandonment by an industrial group, or industrial organization, of the [fol. 472] practices which have been indulged in for many years, then the chancellor might ask the question: Why, knowing of this, didn't you proceed before this? And if

satisfied that the laches existed, not actually from the delay of time, but from a change of position, the Court might deny relief.

[fol. 473] To illustrate, the other day in a case involving price control, where I found that for more than one year no action was brought, while I could not use the lapse of one year as a ground for denying injunctive relief to the Government, I denied the recovery or the reimbursement of the renters of the amount paid, upon the ground that the Statute of Limitations having run against the demand, that I would apply a similar limitation against the exercise of the equity power of ordering the reimbursement.

Now, that principle cannot apply in this case. No laches applies to the Government. You can, all of a sudden, make up your mind to come into court and ask that a practice existent for 20 years be abolished and nobody can say that you slept on your rights because the Government does not sleep on its rights and the Statute of Limitation does not run against the Government, nor does laches run against the Government. It is the old Latin *nullen tempus occurrit regi*. I think that is the way it goes. Just because that is the rule, then there should be a greater liberality in allowing the proof on the part of the defendant because, while the court, assuming that all the facts alleged in the complaint are proved, would not be justified in denying equity relief, the scope of the relief, being discretionary, might be affected by the motivation and the good faith which may appear from the record.

[fol. 474] To illustrate this, going back again to the prayer of your complaint, assuming that you are entitled to—well, I can't pick it out just offhand—assuming that you are entitled to an injunction which forbids the enforcement of any of these contracts, or may even ask them to divest themselves of ownership or as to those which have ownership, which I assume is implicit in the prayer and also in the general prayer——

Mr. Dixon: May I interrupt for a moment, your Honor, to state the Government's position on that point, that perhaps your Honor may have a wrong impression insofar as the Government's contention on that point is concerned.

Paragraph III of the prayer of the complaint asks the court not to declare these contracts or leases as void. We

are asking the court to declare these particular provisions unenforcible as far as the defendants are concerned.

In other words, I gathered from your Honor's remarks that perhaps you felt the Government was asking the court in this case to declare void all of these leases, and so forth, that may be brought into this case, and some of which are the foundations under which these service station outlets are operated.

All the Government is asking, your Honor, is that these provisions in the contract of the type that we have [fol. 475] previously described and referred to be declared unenforcible; and there isn't any question here of any divestiture as far as the Government is concerned of any of the properties that may be involved in this case at all.

The Court: Well, all right. I am glad you called my attention to the limits of the prayer.

Mr. Dixon: And, of course, we are asking for the injunctive relief to prevent the entering into contracts which will contain the provisions complained of.

The Court: Notwithstanding that, what I have said still holds to the extent I have indicated, as modified by your statement.

To sum it up, I have made a rather lengthy statement merely because I feel, as you gentlemen know in all these lawsuits, that as each point arises at times it is helpful if we clarify our thoughts and discuss plainly and state the views on the particular question and the reason why a certain ruling is made.

I still say that in view of the facts I have indicated, the background of these loans should be gone into, because, if it is immaterial, then of course the entire inquiry is immaterial, because you would not have brought out the fact that one of the means of securing these agreements was, in effect, giving a bonus to these people by helping them if you had not thought it had some bearing. Now, if [fol. 476] it has any bearing, the reason why they did is also material. And that is also why I asked the questions I did yesterday and that is why Mr. Hall's questions today are in line with those questions.

With that, I will stop.

Mr. Dixon: I don't want to interrupt you, your Honor.

The Court: I am through. I am through. That will do

me for the rest of the day. In the morning I always make a speech and then I am through for the rest of the day.

Mr. Dixon: I know it is helpful to counsel for the Government to get your Honor's views on these matters as they develop. I am just directing your Honor's attention to provision 33——.

The Court: I could cite authorities from your own memorandum. I haven't my points and authorities with me so that I can pull one out both for you and against you as occasion demands.

Mr. Dixon: This testimony that we are now referring to is introduced under paragraph 33 of the complaint to indicate some of the various means and methods whereby these contracts are secured and entered into.

The Court: Go ahead. All right; I have already said all I am going to say. Objection is overruled.

Mr. Hall: Do you want the question re-read, Mr. McClanahan?

[fol. 477] The Witness: If you please.

(Question read by the reporter as follows:

"Was that circumstance that I have read to you concerning the Utah Oil and Refining Company a circumstance prompting your acceptance or approval of this investment?")

A. It was.

Q. I note on this exhibit that we have been referring to, Government's Exhibit 16, and on the second page thereof the words "Okay E. J. McC". Are those your initials?

A. They are.

Q. Now, Mr. McClanahan, I invite your attention to Government's Exhibit No. 17 and to a paragraph at the bottom of the first page of the exhibit which I will read to you. Reading:

"Dealer has right to terminate company's present agreements by paying Company $3,206 (depreciated value of Company's existing investment) and has stated intention to do so if transaction is not approved. Texas Company has contacted dealer regarding establishing him as their wholesale distributor. (Texas Company does not now have bulk distribution plant in vicinity.)"

[fol. 478] Were the facts stated in that paragraph an inducement prompting your approval of this investment?

Mr. Dixon: I assume, your Honor, we have the same objection?

The Court: Yes. Overruled.

A. It was one of the primary inducements for approving that loan.

By Mr. Hall:

Q. I will ask you one more question about the property that is referred to in Government's Exhibit 16. That, if I understand the situation correctly, was a case where a service station was about to be put in or erected?

A. That is right; at Kamas, Utah.

Q. Whereas, in the case of the property referred to in Government's Exhibit No. 17 that was a service station which had been selling products of Standard Oil Company of California for a number of years, wasn't it?

A. Yes. I think we have been serving this company for something like seven or eight years, 14 years, in fact.

Q. In the parlance of the oil business a "split pump account" is an account which handles the products of more than one supplier, isn't it?

A. That is right, sir.

Q. The term would be applied to a gasoline service station that had the pumps of more than one company purvey-
[fol. 479] ing gasoline, wouldn't it?

A. That is correct.

Q. Yesterday reference was made to open accounts and I believe an exhibit in evidence shows that in March of 1947 there were 742 of those open accounts to which your company sold gasoline. Do you recall that testimony?

A. I don't recall that particular number. It was approximately that amount, as I remember it.

Q. It is true, isn't it, that the dealer operating under one of those open accounts would be perfectly free to tell Standard Oil Company at any time to pull out its pumps so that he could put in the pumps of some other supply company; isn't that correct?

A. That is right.

Q. And that has always been the case with those open accounts, hasn't it?

A. That is right.

Q. I think yesterday, in your testimony, you said that in the case of these open accounts Standard Oil Company of California would not sell its gasoline to one of those open accounts if the account handled was a split pump account.

A. That is right.

Q. That is correct. What are the policy reasons which underlie Standard's practice not to sell to split [fol. 480] pump accounts?

Mr. Dixon: Objection to that question, your Honor.

The Court: Overruled.

A. We have felt as a result of many years' experience that the so-called split pump account is not a good account for us to serve in the public's interest. Experience has proven that they tend to misrepresent the products to the trade. Oftentimes they sell a gasoline out of one pump that the customer may think he is buying from another, creating what we call substitution. We have known of many instances where they have transferred the products from an underground tank to another tank, where it is sold under another brand, because of some temporary compensation that they might get from that particular supplier.

We know from cost studies that it costs us on an average from a cent to a cent and a half a gallon more to serve a split pump account with a multitude of pumps, because of the uncertainties of deliveries, the uncertainty of quantities and the constant sales followup that is required to maintain representation with that account.

We also know through experience of it that the dealers themselves are not favorable to dividing their interests with suppliers, for two basic fundamental reasons: They haven't the merchandising support from the supplier like they would have if that supplier knew that they were [fol. 481] constantly selling his product; and secondly, they haven't an assurance of supply. There is no obligation on the part of the supplier to continue supplying a split pump account such as there is on a long term, secured tenure arrangement with what we call a 100 per cent account. That is, generally, the reason why split accounts have to a great extent ceased to exist.

Does that answer it?

Mr. Hall: You may take the witness.

Redirect examination.

By Mr. Dixon:

Q. Mr. McClanahan, you said that the single pump or the split pump operator does not get the support of the supplier. What do you mean by that?

A. Well, in the first place, he carries what we term a neutral color scheme and his place of business is not identifiable by the mobile buying public such as it would be if he represented the advertised products of a supplier. It is difficult for a buyer to single out the particular product that he wants. That is one phase of it.

Q. Is not the operator of this single pump or split pump station supposed to be an independent businessman?

A. That is right.

Q. Operating on his own?

A. That is right.

[fol. 482] Q. Does the Standard Oil Company have any investment in that business apart from delivery of gasoline to that outlet?

A. None whatsoever.

Q. So that it has no financial interest whatever in the manner or method whereby the operator of that pump, a single pump, sells the product, is that correct?

A. That is correct.

Q. And at any time, as you have suggested, either party may terminate the arrangement, cease selling to that outlet or the dealer cease selling your product?

A. That is correct.

Mr. Hall: Wait a minute. Are you referring to open accounts, counsel?

Mr. Dixon: Yes; that is what we are talking about.

Mr. Hall: The witness' testimony has not been directed to open accounts.

Mr. Dixon: The latter part of his testimony, as I understood it, was particularly directed to why Standard Oil Company did not, as a matter of policy, desire to sell and would not, in fact, sell the split pump account, counsel.

Mr. Hall: All right. You and I disagree, but we will go ahead. I did not mean to interrupt you.

[fol. 483] By Mr. Dixon:

Q. So you say the reason that the Standard Oil Company will not sell a split pump account is because they feel, that is, the Standard Oil Company feels that it is not in the interest of the dealer himself, is that correct?

A. No. I stated not in the interests of the public.

Q. Just where is the public affected, provided the Standard Oil Company can sell gasoline to such an outlet and gets paid for its products?

A. I think I outlined that in answer to the other question, that we have experienced substitution, adulteration and misrepresentation of our products from the time it is put in the tank of the dealer until it reaches the consuming tank of the public, accompanied by indifferent service.

Q. If the Standard Oil delivers the gasoline to a dealer with one or two different pumps does it all go in the same tank?

A. No.

Q. What opportunity, then, is there of any fraud on the public if that gasoline comes out of the tank and goes into the pump bearing the label of the Standard Oil Company?

A. It does not always work that way, Mr. Dixon. Have you ever purchased a gasoline from a split pump account?

Q. I know that I have seen practically no split pump accounts in existence, and I don't believe there have been [fol. 484] any that I have noticed for sometime.

A. That is right. They are not popular.

Q. That is why I am directing my inquiry as to why the Standard Oil Company, which apparently, as you have indicated, has a policy of not selling such accounts, does not want to carry a split pump station or operate a split pump station.

A. I endeavored to outline the reasons in answer to that a short time ago. I might emphasize them again; that is not a permanent arrangement; it is not an economical manner of distribution and we——

Q. Well, let me ask you about that, Mr. McClanahan.

Mr. Hall: Let him finish his answer before you interrupt him.

The Court: Let him finish his answer.

Mr. Dixon: Go ahead.

A. That there is that possibility that we know has existed in the past of misrepresentation of our products so that the ultimate consumer, in many instances, from our previous experience, just did not receive our product.

Q. How long has the Standard Oil Company had this policy of not selling to split pumps?

A. Around '38 or '39. I believe that is the year. It may vary one or two years.

Q. How many split pump accounts, if you know, did you [fol. 485] have before that time?

A. Well, there was a transition from split pump business to representing the company entirely in previous years, and through practice that diminished. I can't recall the exact amount in 1938 or 1939, but there were not very many. It was a process of eliminating themselves.

Q. Was that because the dealers who wanted split pumps could not get them from your company or perhaps some of the other companies, if you know?

A. No; because dealers generally did not want to merchandise in that manner. It was not a sound policy for them.

Q. For the reason, you say, that the dealers decided themselves that they did not want to carry two types of gasoline and that was why the company adopted the policy? Was that one of the reasons?

A. That was one of the reasons, and the better dealers felt that way about it.

Q. But if a dealer honestly wanted to carry a split pump account and was a person of integrity and honesty the Standard Oil Company would still not sell that dealer if he carried a split pump at his station; is that a fact, Mr. McClanahan?

A. That is right.

Q. You mentioned the possibility of fraud on the [fol. 486] public as further justification for that. Can you tell this court what actual difference there is between the various regular grades of gasoline that are distributed in the market today under various brand labels?

A. I am not a technical man, Mr. Dixon. All gasolines being sold today will propel an automobile. There are certain advantages in grade that we feel have values noticeable to the public.

Q. Let us discuss for a moment this so-called regular type of gasoline.

A. Well, that is what we call a regular type of gasoline, applies to all manufacturers. They all make a regular type.

Q. And it is substantially the same octane rating, is it not?

A. No. The octanes differ considerably between one grade and another.

Q. I am talking now about regular gasoline.

A. I am talking about the second brand regular gasoline.

Q. I am not talking about the third run of gasoline.

A. The first grade, we are not talking about the first grade. That is the high octane?

Q. No, sir.

A. The regular grade.

[fol. 487] Q. What is the substantial difference, if any, between the so-called regular grades of gasoline that are sold in the market at retail outlets today?

A. The differences mainly that are noticeable to the motorist through feel would be quick starting or quick acceleration, and those are the two things that are perceptible to the motorist. Then——

Q. That depends somewhat on——

Mr. Hall: Just a minute. Let him finish, please.

A. Then there is a dilution that takes place of an inferior grade that is injurious to the motor. The end points are high and it does not totally combust, and in the winter time when you do need a quick starting fuel an end grade would be quite noticeable and injurious to the motorist and worth less money.

By Mr. Dixon:

Q. What difference, if any, is there in the octane rating, if you know, of grades between the regular brands of gasoline on the market today?

A. I would say there is a range of between 67 and 73 or 74, probably 7 degrees or 7 octanes.

Q. What difference from an octane grading point of view is there between Standard gas and, we will say, Shell gas—regular gas I am talking about now?

The Witness: Do I have to answer that?

The Court: Yes.

[fol. 488] A. Shell makes a good gasoline.

By Mr. Dixon:

Q. I asked what the difference is between the octane rating, if any.

A. Well, between the Shell and our own gasoline, our second grade, there would be very little difference, if any.

Q. What difference is there between Standard and Mobil gas, if any, regular gas, if any?

A. They may vary with the season of the year.

Q. At the same time of the year, Mr. McClanahan.

A. The same time of the year?

Q. Yes.

A. There could be some difference in favor of Mobilgas in some respects. It might be favorable to us. There are several elements that make up a gasoline. Octane is just one and——.

Q. Is there any——

Mr. Hall: Wait a minute. Let him finish his answer.

By Mr. Dixon:

Q. Is there any substantial difference, Mr. McClanahan, in the two gases?

A. There could be.

Q. Now, what would that substantial difference be between Mobilgas and Standard gas at the same time and of the same grade?

A. We have what we call a tailored gasoline to meet the requirements of the climates on the Pacific coast. We [fol. 489] send the winter grade to Seattle with a certain starting feature. We have another grade for Spokane, and there are about 10 different sections on the coast and we place those gasolines in those areas to meet the climatic requirements in those areas. We think, as far as our knowledge is concerned, that we are the only company who climatically tailor-makes their gasoline. We think that is a difference in favor of quality and it is of benefit to the motorist.

Q. Is that part of the advertising program of Standard up in those areas as against Mobilgas?

A. That has been used extensively.

Q. And Shell gas?

A. It has been.

Q. What results, if any, have you had from the Shell and Mobilgas or any of other companies selling there with reference to that?

A. Well, our sales have responded favorably to the quality advertising back of that particular feature.

Q. It is a fact, is it not, Mr. McClanahan, that there are various exchange agreements covering regular grades of gasoline between the various companies engaged in this business of distributing regular gasoline to the consuming motorist?

A. That is right; there have been and still are.

Q. So that it is a fact, is it not, that gasoline coming from the Standard refineries may, by exchange pro-
[fol. 490] visions, actually wind up in a pump of any other company selling gasoline under a different label in the immediate area in which the company is selling that gasoline, is that not a fact?

A. Not quite. It might find its way into some one other company's tanks who happened to be exchanging at that time. There is quite a difference between our gasoline finding its way into their tanks and their gasoline in payment to our exchange finding its way into our tanks. We sometimes do not accept the quality that is offered to us, quite frequently.

[fol. 491] Q. Following that, my question, Mr. McClanahan, is, if the Standard Oil Company refines gasoline in its California refineries, that is Standard Oil gasoline, isn't it?

A. That's right, Chevron gasoline.

Q. Or Chevron gasoline, and by these exchange agreements may that gasoline ultimately come into the account of a company selling Mobil gas?

A. I can't recall exchange with them that has happened or might happen.

Q. Do you know, when this gasoline is exchanged from your refineries with another company retailing regular gasoline to the public, where that gasoline goes after it has been turned over to the company with whom it has been exchanged?

A. Not precisely.

Q. So it is a fact, is it not, that under this exchange

arrangement that the Standard Oil gasoline may in fact ultimately find its way into the pump of another company selling retail gasoline to the public, under a different trade name?

A. That could happen.

Q. You think, then, that would be all right? I mean, you don't think that they would be doing what you said of the operator who was running a plant of his own, or an outlet of his own, and wanted to sell two different kinds of [fol. 492] gasoline, and have two different pumps in his outlet? You think that would be all right, do you?

A. I don't think I understand your question, Mr. Dixon.

Q. Withdraw the question. As I understood your position, Mr. McClanahan, you said one of the reasons why the Standard Oil Company would not sell a split pump account was because you felt that the public might be hurt by having Standard gasoline go into the pump of the other company at that outlet, is that correct?

A. Standard gasoline would not go into the pump of the other company, but their gasoline might go into our pump. That is what I object to.

Q. How do you know the converse would not be true?

A. They might have a bad quality of gasoline, and our gasoline is unquestioned, so far as the motorist is concerned.

Q. If that dealer is likely to do that, is he going to distinguish between Standard gas, and the other gas at that pump, if he is going to do that sort of thing?

A. Probably not.

Q. You think that is wrong,—that chance to defraud the public, that is wrong, and on that basis Standard does not sell to a split pump account?

A. Mr. Dixon, we have had accounts, where we have had [fol. 493] the trademark and the color in the pump, and the account has sold gasoline from that pump for six months, and we haven't delivered a gallon of gasoline to the dealer in six months, but the meters on that pump showed a tremendous output. Our gasoline is accepted, and has a certain acceptability, and is a drawing card to bring people into the station, but they do not get our gasoline.

Q. Suppose some of this exchange gasoline found its way into these outlets and into a different pump?

A. It would not find its way into our pump. You are speaking about gasoline we take from someone else that we exchange with?

Q. The gasoline that the Standard turns over to somebody else, which ultimately finds its way into the retail outlets.

A. No, I don't think we would exchange with people who would do that.

Q. It is a fact, is it, as you stated a short time ago, that you do not follow the gasoline that is exchanged, to know whether or not that could happen?

A. Practically it doesn't, Mr. Dixon. If we——

Q. But you don't know——

Mr. Hall: Wait a minute. Let the witness complete his answer.

A. In connection with an exchange, we may pay a [fol. 494] certain company a certain quantity, paying back, you might say, gasoline we borrowed from them. We would not loan to a company, or borrow from a company we thought would take that gasoline and put it into our tank at a resale account.

Q. In other words, you determine with whom you are to make your exchange agreement, is that correct?

A. That is correct. We are not exclusive, in that we deal with people that have integrity.

Q. Now, Mr. McClanahan, I direct your attention to this Government's Exhibit 16. You will note the proposition of the Utah Oil & Refining Company, according to this memorandum, Government's Exhibit 16, contemplated this party getting $3,000 from the Utah Refining Company to go ahead with its proposal, as outlined in this exhibit, is that correct?

A. Yes, it so indicates here that the competitor offered $3,000.

Q. And Standard only had to put up half of that amount, or $1500, is that correct?

A. No.

Q. I mean that you did not get back?

A. That's right. We put up $4,000.

Q. Yes, you put up $4,000, and got back $2500, so there was an actual $1500 there that your company did not get back in this transaction, is that correct?

A. That is not correct.

[fol. 495] *A. No, that is not correct.*

Q. I am talking now about the money that you gave them, or that is referred to in this transaction; that was never actually repaid, was it?

A. No.

Q. That is the point I am making.

A. With this amplification, Mr. Dixon. There were certain advantages that we gained of value to us, that more than offset the $1500 absorption, by the greater tenure, and an outlet in a community where we did not have representation, and where it would have cost perhaps more to build a station of our own.

Q. That $1500 was charged off to what, the general operating expenses of the company? How would that be handled, do you know?

A. No.

The Court: He said yesterday that he did not.

By Mr. Dixon:

Q. Do I understand then this letter, Government's Exhibit 16, to mean that $3,000 would have gone to the party involved here rather than the $1500 that he ultimately got from Standard, according to that exhibit?

A. Do you mean he would have obtained $3,000 from the competitor as against our $1500?

Q. That's right.

A. That is quite right, and he possibly would not pay [fol. 496] any of the $3,000 back, I don't know.

Q. Then what do you understand by this Exhibit 16, when it refers to the fact that the $3000 therein was to go to this party from the Utah Oil & Refining Company?

A. As this was presented to me, and as I review it now, we were trying to gain representation at Kamas, and apparently the Utah Refining Company were trying to do the same thing with the same prospective operator.

Q. Was there a station already built at this property, or not?

A. I don't think so, because it says: "toward construction." I presume it was built subsequent to the financial arrangements he had to make. He probably used some of this money to build the station. That is the usual way it

occurs. So he was perhaps dealing with the Utah Oil, or they were soliciting his representation. Our people were doing the same thing.

Where competition exists of that nature, certain agreements are arrived at which we think are the result of competitive negotiations with the account. As I mentioned yesterday, we evaluate all features, the investment, the building of the station, the representation at that point, where we do not have any, so that our interests will be available. You will notice here it says that this person has resided at Kamas for 31 years, and is a skilled me-[fol. 497] chanic. He is the kind of individual we like to have associated with us, and assist them, and they make good merchants for the company.

Q. From the document, Exhibit 16, does it appear to you that Standard Oil Company was getting this station in fact by putting up $1500 in the manner disclosed, as against $3,000 offered by the Utah Oil & Refining Company?

A. That's the way it appears to me.

Q. And it was on that basis that you approved this arrangement, is that correct?

A. Yes, sir.

Q. I believe you testified, Mr. McClanahan, that the distributor agreements were rapidly going out of use by the company. There are still some of them that are in use, are there not?

A. I believe that figure is around 252 remaining.

Q. And the dealer holding a distributor agreement, so-called, as that agreement terminates, do you sign him up on the TBA agreement? Is that the policy of the company?

A. That is correct.

Q. So, whereas the distributor agreements may be gradually eliminated as they terminate, they are supplanted by the dealer TBA agreement?

A. That is correct.

Q. That is correct, isn't it?

[fol. 498] A. Yes, sir

Q. The net result of that transaction is that Utah, mentioned in Government's Exhibit 16,—the result was that that potential competitor, the Utah Refining Oil Company, at that outlet, was eliminated, isn't that true?

A. The existing competition. That competition existed at the time we were negotiating with this individual. It actually existed.

Q. Were they operating a station at that time?

A. No, but they were apparently vigorously bidding for representation. We were having, therefore, potential competition. It was the immediate situation that caused us to make the arrangements that we did.

Q. Do you know whether they have representation there at the present time, the Utah Oil & Refining Company, in that city?

A. No, I do not, sir.

Q. I believe you testified also that it was the policy of the company not to make loans unless they got the full amount of the money back that was put up.

A. That is correct.

Q. It is a fact, however, that such loans were made, isn't it, Mr. McClanahan, in which the Standard did not get the full amount of its loan back?

A. I think half of the loans that we ever made were [fol. 499] discussed here today. I think they will total three or four.

Q. It is a fact that those loans, so-called, were made in the various States in which Standard does business, isn't it?

A. I am not acquainted with the other two, Mr. Dixon, but it so happens, I believe, that one is at Hermiston, Oregon, and the other Utah. I don't know where the other two were.

Mr. Dixon: I think that is all.

Recross Examination

By Mr. Hall:

Q. It might be true, might it not, Mr. McClanahan, that when the term of the distributor agreement expired that the Standard Oil Company would not have a chance to replace them with an agreement TBA, because some competitor would come in and sign up that particular dealer?

A. That is quite right, and it has happened.

Q. Those cases have occurred, haven't they?

A. Yes.

The Court: The answer was obvious.
Mr. Hall: That is all.

(Short recess.)

Mr. Hall: May I recall Mr. McClanahan?
The Court: All right.

[fol. 500] Recross Examination (Continued)

By Mr. Hall:

Q. Will you tell us to what extent Standard checks the quality of gasoline which it receives, as the result of an exchange?

A. We have a very rigid procedure that we follow before we accept in kind products that we exchange with other companies, and in many cases we won't accept the product that they offer in exchange for a similar product that we loan to them, for a reason that we think we were justified in, that we would be selling the product under our brand, that we have advertised extensively from a quality standpoint, and the source of the product differs many times from that standpoint. We have had instances recently where we have loaned our first grade gasoline, which contains only 1 cc of lead, and we were offered gasoline containing 3 cc's of lead, which we would not accept. We have had other cases,—a recent one where a major company gasoline has been offered us in payment for gasoline we have loaned to them, which would be high in sulphur, which did not meet our specifications, and we just won't accept the gasoline.

In some cases we have accepted a product from other companies, below our product, and we have re-run these products in our refinery to bring them up to our specifications; and in cases of that kind they usually pay us for [fol. 501] the additional processing.

Mr. Hall: That is all.

Redirect Examination

By Mr. Dixon:

Q. Would you care to name the companies, Mr. McClanahan, with whom you exchange gasoline, which was not satisfactory to Standard?

A. I would prefer not to. I think the record can be obtained, that would show that, if it is material.

Q. I won't press the question.

The Witness: I do it primarily from the standpoint of the competitors' interests. I can substantiate my statement.

The Court: May I ask you this question: You talked about various grades of gasoline. Do you sell grades of gasoline to others, without insisting that they sell it under your brand?

The Witness: That is a good question. We do. There is a provision in the State of California which permits us to grant a rebranding license, or permits the taking of our gasoline, and rebranding it under their trademark name; but they have to register that trademark with us, and they can only sell it under the designated name prescribed in the permit, and they can only do it by written consent from us, where agreeable to both parties.

The Court: Do you also sell that brand of gasoline under [fol. 502] your own?

A. No. Can I cite an instance?

The Court: Yes.

The Witness: Let us take, for instance, Petrol. We supply Petrol with gasoline, and they have a brand name called, I think, PDQ, so we permit the Petrol Corporation to take our gasoline and sell it under the brand PDQ, so marked on the pumps, PDQ. But we would not sell PDQ.

The Court: What is the difference between that gasoline and yours? Is it of a lower octane, or what?

The Witness: Not necessarily. It could be. Our supply contracts with people that rebrand varies some, so it gives us quite a little latitude on quality, where we can give them a product that will meet their requirements from a specification standpoint, but not necessarily meet ours. In some cases they are identical, but not always.

The Court: Is that practice general?

The Witness: I think so.

The Court: And it has been for some years?

The Witness: Yes.

The Court: It does not apply to Petrol alone?

The Witness: No, it applies to Signal and other companies.

The Court: I do not wish to disclose secrets. I happened to try, when I was on the Superior Court, a case involving [fol. 503] Signal, and I there learned they were securing gasoline before selling it themselves. I could not bring that out in any other way, except asking you to see if that applies, and it becomes germane because of your statement of your insistence that a particular brand be handled under certain conditions, and not mixed with others.

The Witness: That is correct.

The Court: That reemphasizes what you have said, and that is that your product be sold as such product, and that there be no substitution of another which is not of that quality, and you apply that even to exchanges?

The Witness: That's right.

The Court: All right. Anything further?

Mr. Hall: Nothing further.

Mr. Dixon: No further questions.

The Court: All right, gentlemen, that concludes the examination of the witness and I think we will take our regular adjournment until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock p. m. of the same day.)

[fol. 504] Los Angeles, California, Wednesday, May 5, 1948—2:00 P. M.

Mr. Hall: There are three exhibits in evidence, your Honor, Exhibits 1, 3, and 4, which are forms of agreement. At the end of each agreement it appears by a note at the bottom of the page the form is for use in the States of California, Arizona, Nevada, Oregon, and Washington. There were forms of the same agreement for use in the States of Idaho and Utah. And I am making this statement with Mr. Dixon's permission for the record. The only difference in the forms for use in the States of Idaho and Utah as distinguished from the forms in evidence is that in the forms for use in the States of Idaho and Utah the language in paragraph 3 of Exhibit 1 "and shall not be sold, or offered for sale at prices lower than Company's authorized retail prices therefor at time and place of sale" is eliminated in the Idaho and Utah forms.

Now, there is a similar elimination in paragraph 4 of the Idaho and Utah form corresponding to Exhibit 4, and

a similar elimination in the Idaho and Utah form corresponding to Exhibit 3?

Mr. Dixon: The Government offers into evidence Exhibits 16-A through -F, inclusive, the same being the documents relating to proposal contained in Exhibit 16.

The Clerk: Shouldn't the record show these are marked [fol. 505] for identification?

Mr. Dixon: Yes.

The Court: They may be received.

The Clerk: Are they received, your Honor?

The Court: Yes.

Mr. Hall: Before your Honor rules may I have a general objection running to the documents which counsel is now offering on the grounds that they are irrelevant and immaterial. I am not objecting on the ground of authenticity.

The Court: Which form is this? This is not any of the five original forms; is it?

Mr. Dixon: I beg your pardon, sir?

The Court: This is not any of the five forms?

Mr. Dixon: Yes, your Honor. May I say that the purpose of offering these exhibits is so that the court and the record will have before it all of the papers which relate to the transaction described in that Exhibit 16. And these documents show, which are from the Standard files—show the execution of the contracts and the contracts involved on that property which contain the provisions under issue in this case.

I might say also that there are some other documents in the file there that are of a character which tend to explain the transaction generally, and the Government felt that all of the documents that were in Standard's files [fol. 506] should be put in.

The Court: You offer this as a typical transaction?

Mr. Dixon: Yes.

The Court: Let's see; is Utah in this?

Mr. Dixon: Oh, yes, your Honor. Yes.

The Court: I had forgotten Utah merely because the contracts did not mention Utah.

Mr. Dixon: Yes. The states involved are——

The Court: Yes, all right. That is all right. The objection will be overruled and they may be received as Exhibits 16-A to -F.

The Clerk: These are also marked for identification before being offered.

Mr. Dixon: The Government asks that Exhibits 17-A to -I be marked for identification, the same being papers and documents relating to the transaction referred to in Exhibit 17, and ask that they be admitted into evidence.

Mr. Hall: Defendants object to the offer on the grounds that the documents are irrelevant and immaterial.

The Court: Let me look at those. This is a form of TBA contract?

Mr. Dixon: That is right, your Honor.

The Court: All right. The objection is overruled and the group may be received as 17-A to -I, inclusive.

Mr. Dixon: The Government offers for marking and for [fol. 507] identification Exhibits 18 to 18-D, inclusive.

Mr. Hall: Defendants object to the offer on the grounds that the documents and each of them are irrelevant and immaterial.

Mr. Dixon: Said documents are marked for identification, relating to the proposition covering property in the State of California and the City of Los Angeles. The documents are marked for identification purposes and I offer it into evidence.

[fol. 508] The Clerk: Is that admitted, your Honor?

The Court: Yes.

The Clerk: 18 in evidence, and 18-A to E, inclusive, admitted in evidence.

Mr. Dixon: The Government asks that exhibits be marked No. 19, and 19-A to 19-F, for identification, the same being a transaction comparable to transactions described in Exhibits 16, 17 and 18, in the City of Spokane, Washington.

Mr. Hall: The defendants object to these documents, and to each of them, upon the ground that they are irrelevant and immaterial.

Mr. Dixon: And the Government offers the same in evidence.

The Court: These are some of the papers Mr. McClanahan was examined on?

Mr. Dixon: No, he was not examined with reference to these particular transactions, your Honor. Just the first two.

The Court: This was the one we were talking about yesterday, where there was an objection that only the first page was introduced?

Mr. Dixon: No, your Honor, this is an entirely different matter. That was 16, as I recall it.

The Court: Objection overruled. They may be received as 19, and 19-A to F, inclusive.

Mr. Dixon: The Government asks that Exhibits No. 20 [fol. 509] and 20-A to G, inclusive, be marked for identification, the same being a comparable transaction in the City of Parma, Idaho.

Mr. Hall: We don't accept the characterization, your Honor.

Mr. Dixon: That's right.

Mr. Hall: We object to each of the documents.

The Court: We will receive them without characterization.

Mr. Hall: We object upon the ground that they are irrelevant and immaterial.

Mr. Dixon: The only purpose of the characterization was to identify the exhibit for the record; that was all.

The Clerk: 20 marked for identification, in evidence, and 20-A to G, inclusive, marked for identification, in evidence.

Mr. Dixon: The Government asks that Exhibits No. 20 and 21-A through H, inclusive, be marked for identification, the same being transactions in San Pedro, California.

The Court: All right.

Mr. Dixon: The Government offers in evidence Exhibits 21 and 21-A through H, inclusive.

Mr. Hall: Is that the one I just looked at?

Mr. Dixon: Yes.

Mr. Hall: The defendants object to these documents, [fol. 510] and each of them, upon the ground that they are irrelevant and immaterial.

The Court: Objection overruled, and the documents will be received as 21 and 21-A to H, inclusive.

The Clerk: 21 and 21-A to H, inclusive, marked for identification and admitted in evidence.

Mr. Dixon: The Government now calls Mr. E. D. Thompson, general manager of Dealers Sales for the defendant Standard Oil Company, under Rule 43 (b).

ERSKIN D. THOMPSON, called as a witness by the Government under Rule 43 (b), being first duly sworn, testified as follows:

The Clerk: What is your name?

The Witness: Erskin D. Thompson.

Direct Examination

By Mr. Dixon:

Q. What is your address, Mr. Thompson?

A. Oakland, California.

Q. By whom are you employed?

A. Standard Oil Company.

Q. What is your position or office with that company?

A. General manager of Dealers Sales.

Q. How long have you been with the company, Mr. Thompson?

A. Thirty-two years in January.

[fol. 511] Q. How long have you held your present office or position?

A. Since the 1st of June, 1944.

Q. What positions did you occupy with the company prior to that time?

A. I started as a service station operator in Seattle, in 1916. In 1918 I was assistant special agent on a tanker in Alaska. Later that year, special agent at Duwamish, Washington and about three years later, special agent at Whittier, California; then Anaheim, California; and in 1923 I went to Oakland as City Sales Superintendent. About four years later, to Seattle, in the same capacity. In 1928, to Fresno, California, as assistant District Manager. In 1931, to the home office of Standard Stations, Inc. In 1932 I went in as assistant manager of the sales development and advertising department. Later I became manager. In the fall of 1943 I spent a few months as assistant general sales manager, and in June, 1944 was established in my present position.

Q. In your position and work with the Standard during the latter part of the twenties, that is, that period from 1920 to 1930, did you have occasion to become familiar with the types of agreements used by the company at that time, insofar as the sale of petroleum products by Standard dealers was concerned?

A. In a general way, yes. I was in an administrative [fol. 512] position, and did not actually negotiate the contracts, but I know generally, as far back as my recollection goes.

Q. In that position, Mr. Thompson, did you at any time have occasion to examine or look at the requirement of agreements used by the company in dealing with the dealer outlets?

A. I would say yes, but, as I say, in a more or less superficial way. My recollection isn't too good that far back.

Q. Were you familiar with the form of subleases in use between the company and dealers selling products at that time through retail outlets?

A. Yes, generally.

Q. I will hand you what is marked Government's Exhibit 5, and ask you to refer to Paragraph IV, contained on said exhibit and state, if you can, whether a provision in substantially the same language as that was used in the leases you had occasion to become familiar with, or were familiar with in the later '20's?

Mr. Dixon: I subpoenaed——

Mr. Hall: That is objected to as calling for evidence that is not the best evidence; no proper foundation laid; and incompetent, irrelevant and immaterial.

The Court: Did you start to say something, that you subpoenaed——

Mr. Dixon: I started to say we quite agree that this is [fol. 513] not the best evidence. This is a Standard official, Standard employee for many years, and we are merely trying to expedite the trial by asking the question.

The Court: Let us have the question.

(Question read by the reporter.)

[fol. 514] The Court: Overruled. Go ahead.

The Witness: I am just reading the paragraph, your Honor.

A. I would say that the later '20's, that a paragraph similar to this—I don't know how far back that would go, but I would say in the very late '20's the form would have been very similar to this.

By Mr. Dixon:

Q. Mr. Thompson, are you familiar from your position and experience with the company with the type of agreements which were used by Standard in the '30's with reference to distributing petroleum products to retail outlets and dealers?

A. I was familiar in the years '31 and '32, and have general knowledge of the type of agreements that existed subsequent to that date. However, as my testimony shows, I was out of that activity a portion of that period.

Q. Can you state from your experience and service with the company what that type of arrangement was, generally speaking?

A. Starting in the early 30's?

Q. Yes.

A. In the early 30's our business was handled primarily on leases and agency agreements, and agency agreements without leases. In 1934, I believe it was, that the distributor type of agreement was introduced in conjunction with it——

[fol. 515] Q. May I interrupt you to ask you whether the distributor type of agreement you have just referred to is what is called Government's Exhibit 2?

A. That is correct as to general form. That may not have been the form in use in 1934. Then in——

Q. Go ahead.

A. Then in 1938 the agency agreements were superseded by a dealer agreement, and in 1944——

Q. May I interrupt you there, again? By dealer agreement do you mean the type of agreement described as Government's Exhibit 1?

A. It was substantially the same. The print date on this is later, but they would be approximately the same.

Q. Can you state to the court the reason for the dispensing with the use of the agency arrangement or——

Mr. Hall: I do not think he had finished his previous answer, Mr. Dixon.

Mr. Dixon: I am sorry. Go ahead.

The Witness: Did you wish me to finish that history?

Mr. Dixon: Yes; go ahead by all means. Pardon me for the interruption.

A. In 1944 the distributor agreement was replaced by a dealer TBA agreement.

Q. That is what is called Government's Exhibit 4?

A. That is correct. And at that time a further type [fol. 516] of agreement known as "Petroleum Products and Equipment Lease" was introduced.

Q. That is what we call Government's Exhibit 3?

A. That is correct.

Q. Had you finished?

A. Yes, sir.

Q. And now, can you state to the court, Mr. Thompson, if you know, what the reason was for discontinuing the use of the lease and agency arrangement?

A. In 1938 or thereabouts?

Q. Yes. Was that when it was discontinued?

A. My testimony indicated that, I believe it was in 1938, 1937 or 1938, when that was discontinued; and while I was not directly connected with this type of work at that time, the documents show that there were some changes in the corporate structure at that time or agreements. The agency agreements prior to that date had been between the dealer and Standard Stations, and at that time the agreements, due to some corporate change with which I am not familiar —the agreements were between Standard Oil Company, still administered and still negotiated by Standard Stations, but the agreements were between Standard Oil Company and the dealer, which would be the only reason that I would know for changing the agreements; and in the general change it is evident that they changed the titles.

[fol. 517] Q. What control, if any, if you know, did the company exercise over the agent under the agency agreement?

A. No control whatever other than our general interest in his operation.

Q. In other words, he was, as far as the company was concerned, an independent businessman, shall we say?

A. That is correct.

Mr. Hall: You are asking about the agency?

Mr. Dixon: That is correct.

The Witness: And I am speaking of our policy of handling the account from a practical standpoint.

Q. Now, Mr. Thompson, in your capacity as general manager of dealer sales you are in contact, are you, with the salesmen who sell the products, petroleum products of the company?

A. Not directly, except in isolated cases. The salesmen operate out of our district offices and branch offices.

Q. From your position with the company can you state to the court whether any customers of the dealer stations by "dealer stations" I mean those now operating under the type of agreement described in Government's Exhibits 4, 2, and 1.

Mr. Hall: You had better show him the documents.

The Witness: May I see those, please?

[fol. 518] Mr. Dixon: You bet.

Q. —came into the retail outlets you operated by dealers working under those contracts and requested oils for lubricating oils other than those distributed or handled by Standard Oil Company?

A. Our promotional efforts, of course, are directed at both our brands of lubricating oil and gasoline; and I would say that for the most part—in fact in practically all instances, consumers, motorists who buy our gasoline would be also buying our lubricating oil. There are undoubtedly occasions where preferences for other lubricating oils exist, and in those cases, our dealers stock other oils, competitive oils, dealers under these agreements.

Q. Do you mean that the dealers who express either to the company or to some representative of the company that the customers wanted lubricating oil better than those handled or distributed to them by Standard were given the privilege under those agreements of handling those oils?

A. In a few instances that privilege was granted formally. However, in most cases the dealer just ordered and stocked the competitive oils without any understanding had with our company.

Q. Do you mean he ordered and stocked them in spite of the provisions in the contract which limit the stocking and handling of petroleum oils other than those from [fol. 519] Standard in the premises at which the agent was operating?

A. I am talking about the matter of practice in administering our business under the contracts, but not the

terms of the contract. I presume that the dealer would proceed in his own best interests, regardless.

Q. Well, handing you Government's Exhibit 2 and directing your attention to a provision therein which has the marginal note "Quantity", I will ask you whether or not under such circumstances that provision of the contract was complied with by the dealer, or would be complied with by the dealer?

A. This particular agreement, of course, has been out of use since 1944, and there are so few remaining that our operations are uniform as between this agreement and the TBA agreement which does not carry that clause.

Q. I will hand you what has been marked Government's Exhibit 1 and direct your attention to paragraph 3 thereof, and ask you whether that provision would permit the dealer to sell other oils than those distributed or handled by the Standard?

Mr. Hall: Well, now, just a minute. That objection goes to the legal conclusion of the witness. I have no objection to the witness testifying to what the practice was. But you are asking him as to whether the language of an agreement would permit such and such an event to occur.

[fol. 520] Mr. Dixon: It is preliminary. After all, this witness is presumably familiar with these agreements.

The Court: No. I think that calls for interpretation.

Mr. Dixon: It does, your Honor.

The Court: Of the inner meaning of the agreement. I do not think he is in a position to do that.

By Mr. Dixon:

Q. Can you state—pardon me.

The Court: You can show whether that is a fact that resulted, if he knows.

By Mr. Dixon:

Q. Can you state to the court what the purpose of provision 3 in that contract is?

Mr. Hall: Now, that is objected to as calling for a conclusion of the witness and no proper foundation laid.

The Court: Let me see that.

Mr. Dixon: I think this is very fundamental, your Honor.

The Court: I think that question is not permissible. I think the result of the agreement is the test and not for what purpose it may have had in mind. If the purpose is not apparent, then you may show it had that effect; if it is apparent then it is a matter for the court's interpretation. Under either event that question would not be permissible as a proper inquiry.

Mr. Dixon: I am asking the witness——

The Court: You have this in mind, that when you are charging conspiracy, then you may propound to a defendant [fol. 521] who is on the stand, when you cross-examine him, what the purpose of the agreement was. When you are charging a company with violation of the law which is the subject of a civil suit you may go behind the apparent purpose or the apparent language to show that the certain arrangement had an effect, but that you can only prove by showing either contemporaneous statements of the parties or their officers, or by showing the effect which it had. I do not think even as cross-examination that that question is proper because it calls merely for a conclusion of the witness.

Mr. Dixon: If the court please, I am asking this witness who is an official of the company using this contract what the purpose of this provision is. I do not know who else would be better qualified to answer that, unless it be the court as a matter of law. And if it is something——

The Court: I will say this: If that is the purpose, I think I will allow you to ask this: If he knows why that provision was put in. If he knows, I will let you ask him that.

Mr. Dixon: Very well, your Honor.

The Court: But not the purpose.

[fol. 522] Q. Can you state to the Court, if you know, what the purpose of the provision is in Exhibit 2, under the marginal note "Quantity"?

Mr. Hall: Just a minute.

The Court: Read the question.

(Question read by the reporter.)

Mr. Hall: I thought the Court said you could not ask the witness——

The Court: That is the same question. I forget the wording in which I said I would allow you to ask the question.

Mr. Hall: Whether the company adopted this provision.

The Court: Yes. I think I will allow it in that form. Do you know why this provision was adopted? I want you to state facts.

The Witness: Frankly, that provision, in one form or another, has been running through these contracts for so many years, I don't know where it started. All I know today is the manner in which we operate, and how the contracts are administered. I will be very happy to tell you that.

By Mr. Dixon:

Q. Will you do that for us, please?

A. We try, naturally, to sell our product to all dealers, either with or without these contracts, and try to sell it as nearly 100 per cent as is possible to do so. We do have, however,—we had at the last survey we made of retail [fol. 523] outlets, 25 per cent of our outlets handle competitive lubricating oil, which I would feel would be a reasonable measurement of the extent we enforce that provision.

Q. In these contracts, Mr. Thompson, that is, Government's Exhibits 1, 2, 3 and 4, it is a fact, is it not, that the dealers signing these contracts have to acquire all of their petroleum products from and through the Standard Oil Company?

Mr. Hall: Just a minute. The agreements, first, speak for themselves, so far as their contents are concerned. The question is objected to upon the ground that there is no proper foundation laid, and that it calls for the opinion and conclusion of the witness.

Mr. Dixon: The Government is perfectly content, your Honor, to rest its case upon the language of these contracts, placed in the scope and context of the evidence in this case, as to the use and extent which these contracts are used. We are endeavoring, however, through this witness, to get from the company the interpretation which they place upon these contracts in operation, so the Court may have the benefit of all of the evidence here relating to these contracts which the Government challenges as being in violation of the Sherman Act and Clayton Act, when placed in the contracts that they are placed in in this case.

Mr. Hall: May I be heard a moment, your Honor? [fol. 524]. The Court: Yes.

Mr. Hall: I think this goes back to the statement the Court just made. Counsel and the Government are complaining of certain forms of contract, as to the purpose of the contract from the standpoint of the company. That is beside the point. The Government has a right, under the statute, to inquire as to the effect of the contract, but certainly not as to the meaning which the company puts upon the contract, or the purpose of reason for the company putting something into the contract. The practice of the company may be shown for the purpose of showing the effect of the contract, but beyond that the inquiry would be irrelevant and immaterial, and outside of the issues of the pleadings.

The Court: I believe the particular question is objectionable. I will have to sustain the objection. I am thinking of one of the leading cases. I cannot at the present time think of the name of it, but I believe it is the Hardware Floor case, where the Court held that the exchange of information, apparently innocent on its face, was, in effect, a hint, if I might call it that, something like Mr. Lewis hinted recently, that the company had violated the contract without warrant, which the Court held was a very strong hint that they actually quit. But the Court said that practices of that type may be shown to have been intended as a hint to follow certain particular practices; but, [fol. 525] if I remember the case aright, the conclusion there was reached, not by asking a person what their interpretation of the contract was, but what was done after that exchange of information was received. And in the San Francisco case the Court, while there was no outside evidence that such resulted, held, however, that there was no violation. So I feel that this inquiry in the form in which you have it is not proper, and calls for a conclusion of the witness.

Mr. Dixon: If the Court please, as I have previously stated, it is the position of the Government here that these contracts are clear on their face. We are, however, endeavoring to determine the interpretation in view of the allegations of Paragraph 34.

The Court: The interpretation of the parties is not material. It is the result that is material.

Mr. Dixon: Sometimes, your Honor, the Government feels that the result follows, as a matter of law, from the contract and the language in these contracts itself.

The Court: No, if the contract is of a nature that it has a certain result, that may be true, but there is also this inquiry: If, in fact it does not result in that it becomes merely a paper covenant, and in all monopolies, such as the famous Trans-Wrap case (152 Fed. 2d, 198), which was, of course, a patent case, decided last fall, there was a very interesting point involved, and it is germane to our [fol. 526] discussion, because you have cited a lot of patent cases involving monopolies, which I do not think apply to this type of case. You have cited the Mercoid case, and others, and this Trans-Wrap case modifies the Mercoid case.

In the Mercoid case, the question before the Court was this: Whether an agreement by the patentee of an article with his licensee, that all the improvements shall belong to the patentee, was not monopolistic, and the Court said that it was monopolistic all right, but within the monopoly which the patent law allows. The court, however, said that the man would be protected, even though it might be shown later on that this result was in restraint of trade, and in violation of the law. In other words, the Court wanted to uphold the patentee in his monopolistic right, insofar as his dealings were concerned, and not declare it per se monopolistic, even though it could be prosecuted under the Sherman and Anti-trust law.

Another proposition is this: Either this contract has that effect, or it does not have that effect. If it does have that effect, then it is a question of interpretation by the court, and therefore this inquiry is immaterial. If it does not have that effect, then it becomes a question of law, and no evidence is shown, that regardless of its language, it had that effect, then it becomes a question of law to determine whether that is a violation of one act or the other, [fol. 527] because I agree with you that under the Clayton Act the tendency would be sufficient, while under the Sherman Act it must actually result in a restriction.

That is the general point. I don't know whether counsel will agree with me. In other words, the first that is

required is proof. Then, under the Clayton Act, as the history shows the very object of the Clayton Act to be, is to call certain contracts in their inception, if they have resulted in unreasonable restraint, especially after the Supreme Court, in the Standard Oil case had held that reasonable restraint is permissible in common law, and only unreasonable restraints are condemned by the Sherman Act.

I will say this: If you think the language has that effect, then, of course, you can take a chance of selling me that interpretation, but certainly I would not be aided very much by the opinion of a lay person on the subject.

Mr. Dixon: Perhaps I should explain the reason for my question, then, your Honor.

The Court: I think we have talked an awful lot, both you and I. I think I understand you. If you don't understand me, I am sorry.

Mr. Dixon: I do understand you.

The Court: If it were Friday I would say, as I usually do, I am getting tired, but this is only Wednesday, and we have just begun.

[fol. 528] Mr. Dixon: The witness made certain statements, and I felt advised, because of those statements, to pursue this line of questioning, but I will not continue with my questioning in view of your Honor's ruling.

Q. Mr. Thompson, can you state to the Court where the warehouses that receive the products distributed to the retail outlets in the nature of tires, batteries, and tubes and other automotive accessories are located?

A. I, of course, do not handle the distribution of tires, batteries and accessories. I am trying to recall Mr. McClanahan's enumeration of them. I know there is one in San Francisco and Seattle and Portland and Spokane, Salt Lake, Fresno and Phoenix. I think that is the list. I wouldn't be certain of that.

Q. Those are seven in number, are they? The company has seven warehouses?

Mr. Hall: They have eight, as you know, Mr. Dixon.

The Witness: I am not too familiar with it.

By Mr. Dixon:

Q. Can you state to the Court how many there are, seven, eight or nine, or whatever it is?

A. I don't know for sure; something in that neighborhood.

Q. Do you know of your own knowledge, Mr. Thompson, whether any of those places that the company may have for distributing tires, tubes, batteries to dealers, distribute [fol. 529] across any Stateline?

A. No, I am not familiar with the distribution of tires, tubes and batteries, as general manager of dealer sales.

Q. You are not familiar with that part of the products?

A. No, for the reason that TBA alone handles that in the company. I have nothing to do with the aviation department, or the marine end. It is so scattered, we have one unit in our office that handles that distribution. I only have a very superficial knowledge of what transpires.

Q. Do you know, Mr. Thompson, whether, as general manager of dealer sales, that there are any truck stations operated by independent dealers on open account?

A. I don't believe there are, Mr. Dixon. There are 42 of them, I know, and I believe they are all under the same form of agreement.

Q. By that you mean same form or type of agreement, of the kind referred to in Government's Exhibits 1 to 5?

A. Except there are none under the old distributor type agreement, whatever that number is.

Q. I hand you Government's Exhibit No. 9 for identification, and ask you to refer to the portion thereof headed: Total Gross Quantities of Automotive Lubricating Oils Sold by Standard Oil Company of California to Retail Dealers,—and state, if you can, from the figures contained [fol. 530] therein, what percentages of the amounts expressed on that portion of the exhibit just referred to are RPM motor oil what percentages are Standard Penn motor oil, and what percentages are Zerolene motor oil?

Mr. Hall: If the Court please, I will object to any inquiry of the witness with respect to the document that has not been received in evidence, unless it is for the purpose of laying a foundation for its introduction in evidence. This is a document marked only for identification. I think before counsel crossexamines the witness with respect to

the document or its contents, that it should be either offered or shown that he is now laying the foundation for its introduction later.

The Court: I presume that is the object, to have the examination of the witness with regard to the document, and if he does not disclose the contents, except to identify it, so that it may be admitted, it is permissible.

Mr. Hall: Your Honor will see from the last question that he is not trying to lay the foundation for its introduction in evidence, but he is assuming the truth of the facts stated in the document, to get the witness' opinion from those matters.

Mr. Dixon: May I be heard in regard to the question and the objection?

The Court: All right.

[fol. 531] Mr. Dixon: We subpoenaed, through the Standard Oil Company, certain statistical information, of which there was a compilation in answer to that portion of the subpoena. Among the things we asked the Standard Oil Company, was the dollar volume of the lubricating oil sold to retail outlets under these agreements. We did not get that information, presumably because the company perhaps could not get it, but they did give us this compilation of figures of the total amount of lubricating oil sold, but they did not give us the price. They gave us the price in the compilation of three different types of oil which are included in the total figure given. The purpose of my question is to determine, if possible, from this witness, whether he can tell this Court the approximate percentages of the different types of oil that are sold by the Standard Oil Company, from that memorandum. That is the purpose of it.

Mr. Hall: If your Honor please, I can't understand why counsel does not offer it in evidence.

The Court: The objection is to the witness using the memorandum, not to refresh his recollection, but if you want to refresh his recollection, you can use any memorandum. I agree with Wigmore that you cannot use a calendar or a newspaper, but the sole idea that a witness can only refresh his memory from something he himself wrote is as dead as the dodo. But you are not using it for that [fol. 532] purpose. You are asking him to really translate

in his own oral testimony figures he finds on the document, which is not in evidence yet.

Mr. Dixon: My question is directed to this witness to determine, if possible, from him, if he can answer, what the percentage of the sales is of these particular products, and this witness, as I understand it, is supposed to be in charge of dealer sales. If he can't answer it, then the question is improper, of course.

The Court: I will sustain the objection. I will allow the question to be asked as to whether he knows, without any reference to this document, what the percentage would be of the sale.

Mr. Dixon: I was just going to ask him that.

The Court: I will give you credit for it.

Mr. Dixon: You take it, your Honor.

Q. Do you know, Mr. Thompson?

A. In what period?

Q. The year 1946, approximately what the percentages were?

A. I would have to give you an approximation.

Q. I understand.

A. Because I would be very happy to supply those figures to you, with an opportunity to review them.

Q. We would much rather have the figures themselves. [fol. 533] If you can give us, Mr. Thompson, the actual percentages, we would rather have that, from your records, of the sales of RPM motor oil, Standard Penn motor oils and Zerolene motor oils, the total amount of your sales. I am perfectly satisfied with your doing that.

A. The thing, I believe, we were unable to supply was the dollar value, because it would be a terrific job to make a compilation of the percentages. I would roughly guess, for each dealer outlet, 55 per cent RPM, and 35 per cent Standard Penn, and 10 per cent Zerolene, would be my best approximation.

Q. Mr. Hall does not like guesses, and I don't know whether that is acceptable to him. Perhaps we had better have the actual figures.

Mr. Hall: You will admit that this is the first time you have asked us for those figures?

Mr. Dixon: Yes, it is.

Mr. Hall: I am perfectly content, Mr. Dixon, that you build your case on guesses.

Mr. Dixon: I don't know of any better guess than from an official in charge of this particular business for the company.

Q. To the best of your knowledge, is that the approximation?

A. I would say that is approximate. It might be [fol. 534] slightly different compared to the actual figures.

Mr. Dixon: Thank you very much. That is all I want to know.

The Court: Any questions at this time?

Mr. Hall: Are you all done with the witness?

Mr. Dixon: Yes.

Mr. Hall: With the Court's permission I would like to do my examining of Mr. Thompson as a part of our case, if agreeable.

The Court: That is all right. There is no objection.

Mr. Hall: I have no questions at this time.

(Short recess.)

[fol. 535] (Short interruption for other court proceedings.)

The Court: All right.

Mr. Dixon: The Government asks that Exhibits 22, 22-A to -I, inclusive, 23, 23-A to -X, inclusive, 24, 24-A to -I, inclusive, be marked for identification.

The Clerk: So marked.

Mr. Dixon: The Government offers said exhibits 22 to 22-A through I, inclusive, in evidence.

Mr. Hall: These are objected to and each of the documents that has been marked in each package which has been marked are objected to on the grounds that they are irrelevant and immaterial.

The Court: All right.

Mr. Dixon: The Government offers into evidence——

Mr. Hall: Hold it just a moment.

The Court: Did you separate 22?

Mr. Dixon: No, your Honor. They are all together. They should be clipped together.

The Court: That is all right. They may be received and marked 22 and then 22-A to I.

Mr. Dixon: The Government offers into evidence Exhibits 23, 23-A to X, inclusive.

Mr. Hall: Defendants object to each of the documents so referred to on the grounds that they are irrelevant and immaterial.

[fol. 536] The Court: Are they of a similar character or a different character?

Mr. Dixon: Those are of a similar character.

The Court: All right. Overruled.

Mr. Dixon: The Government offers into evidence Exhibits 24, 24-A to I, inclusive.

Mr. Hall: To each of these documents defendants object on the grounds that they are irrelevant and immaterial.

The Court: Overruled.

Mr. Driscoll: The Government will call Mr. Alan E. Van Sinden as its next witness.

Alan E. Van Sinden, called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Alan E. Van Sinden.

The Clerk: How do you spell your first name?

The Witness: A-l-a-n.

The Clerk: Middle initial?

The Witness: E.

The Clerk: And your last name?

The Witness: V-a-n S-i-n-d-e-n.

[fol. 537] Direct examination.

By Mr. Driscoll:

Q. What is your residence address, Mr. Van Sinden?

A. 4568 Edgewood Place, Los Angeles.

Q. And your occupation, Mr. Van Sinden?

A. Salesman.

Q. For whom do you work or by whom are you employed?

A. The C. E. Ridley Company.

Q. And what is the business of the C. E. Ridley Company?

A. Distributors of Macmillan Ring-Free Motor Oil and greases.

Q. And in what area or territory is your duty as salesman for Macmillan Ring-Free products?

A. In Los Angeles-Hollywood district and part of the district on the east side.

Q. How long have you been employed as a salesman of Macmillan Ring-Free lubricating oil and greases?

A. Well, I have been altogether six years, practically six years.

Q. Has that been continuously with C. E. Ridley and Company?

A. No. I have been with the C. E. Ridley Company for the past eight or 10 months; and prior to that the balance of the time was put in with the Macmillan Petroleum Company.

[fol. 538] Q. And what is the business of Macmillan Petroleum Corporation, if you know?

A. Manufacturing and selling of Macmillan motor oil, gasolines, and petroleum products.

Q. And do you know the source of their supply of lubricating oils and greases? Where is their refinery located?

A. Their refinery is located at Eldorado, Arkansas.

Q. Will you just state generally what your duties as a salesman of lubricating oils and greases are with respect to the trade that you solicit?

A. Well, I solicit business from the consumer accounts, such as trucking accounts, ice cream, dairies and things like that. And also, most of my work has been with service stations and garage re-sale accounts. I solicit the business to increase the sale of Macmillan oil if it is in there or to encourage the dealer to take on the line if he does not have it at the present time.

Q. You say that a part of your calls are made upon service stations?

A. Yes; they are.

Mr. Driscoll: At this time, if your Honor please, the Government will ask to mark for identification the documents produced by the defendants under subpoena No. 2, Paragraph I, item No. 32, being documents in reference [fol. 539] to service station of Ferrick and Knott, located in the City and County of Los Angeles, California.

The Clerk: Is this admitted in evidence, your Honor?

Mr. Hall: No. It has not been offered yet.

The Clerk: No. It is just being marked Government's Exhibit 25 for identification.

Mr. Driscoll: I now move the admission of the Exhibit No. 25 into evidence.

Mr. Hall: The offer into evidence is objected to on the grounds that each and all of the documents are irrelevant and immaterial.

The Court: This is another sublease?

Mr. Driscoll: Sublease and dealer agreement TBA and confirming letter of sale.

The Court: The objection will be overruled. They will be marked 25.

By Mr. Driscoll:

Q. Mr. Van Sinden, in the course of your duties as salesman do you call on those service stations which distribute petroleum products under the brand of the Standard Oil, the Chevron Service Stations?

A. I do to a very limited extent.

Q. Have you ever called upon a service station located at 5300 Santa Monica Boulevard, operated by Ferrick and Knott?

A. Yes; I have.

Q. When did you first call on that station?

[fol. 540] A. I was transferred into that territory in June of 1943 and at that time I made contact with Mr. Ferrick of the Ferrick and Knott station.

Q. And do you recall whose gasoline and petroleum products they were retailing at that time?

A. To the best of my knowledge, I think they were retailing Wilshire products.

Mr. Hall: Pardon me. Could I have that date called for by the question?

Mr. Dixon: 1943, Mr. Hall.

Mr. Hall: 1943.

By Mr. Driscoll:

Q. As a result of your call on this service station did you at that time sell them your product?

A. Yes; I sold them then.

Q. And those products were Macmillan lubricating oils and greases?

A. Yes, sir.

Q. And did you continue to sell them thereafter?

A: I continued to sell the account for a period of a year, I would imagine, or a year and a half, and then——

Q. Approximately—excuse me.

A. Well, they made a change of gasolines about that time and at that time I lost them.

Q. At about what time did they make that change, if you recall, to the best of your knowledge?

[fol. 541] A. I believe it was November of 1944.

Q. And do you recall whose brand of gasoline and petroleum products they then began to dispense?

A. They had made the change to Standard Oil Chevron's products.

Q. At the time of your call when they discontinued purchasing your Macmillan lubricating oils and greases what, if anything, in connection with that call then occurred, if you can remember?

Mr. Hall: Now, just a minute. I object to any conversations with this dealer at this station on the ground they are hearsay, your Honor, and ask the court to instruct him in his answer not to relate any conversations with the dealer.

The Court: Read the question.

(Question read by the reporter.)

The Court: Well, I can't see the materiality of anything that occurred after an agency has abandoned it.

Mr. Driscoll: The witness, your Honor, has testified that he began first calling on this station in 1943, when they were selling Wilshire gasoline and lubricating oils and greases and petroleum products, and that he sold them Macmillan Ring-Free oils and greases, and continued to do so until they changed to Standard Oil lubricating oils and greases and gasoline about the month of November or the latter part of 1944.

[fol. 542] Now we desire to demonstrate the effect of these contracts by the facts and circumstances of what occurred at the time this account was discontinued and Standard Oil products were taken on by the dealer. It certainly is rele-

vant to an explanation of the operation of the contract, what the dealer thought he had.

The Court: I will overrule the objection and will reserve a motion to strike. It may be it bears upon the inducements for resuming dealings.

Mr. Hall: First, may I be heard on that?

The Court: Yes.

Mr. Hall: Conversation with the dealer would clearly be hearsay. The dealer is not in court. I am not entitled to cross examine the dealer because he is not in court.

The Court: Well, it is not so much what the dealer said. It is any inducement the witness made on behalf of the company that would be binding as being the person who was authorized to conduct the negotiations.

Mr. Hall: Oh, you mean the inducement this man who is on the stand now made?

The Court: Yes.

Mr. Driscoll: That is not the purport of my inquiry, your Honor. My inquiry is as to when he made the last call or a call that he made upon this dealer, the first call he made after the dealer had taken on the products of the [fol. 543] Standard Oil Company. What then in the business relationships between the dealer, Ferrick and Knott, and this salesman occurred as between them.

The Court: I may not see the object of this. I will overrule the objection and reserve a motion to strike.

Mr. Driscoll: Will you read the last question, Mr. Reporter?

(Question again read by the reporter.)

A. Mr. Ferrick informed me that they had just recently made a new contract with the Standard Oil people and we would no longer be able to sell him Ring-Free oil, as a result of the contract and the new connections they had made. And I asked him about the amount of stock he had on hand, as to whether or not they were going to dispose of that. I had reasons for asking that. He said, "No." He says, "I imagine," he said, "that we can just continue to sell that out until it is exhausted and that will end our relationship."

Mr. Hall: Now, if the court please, I move to strike the answer of the witness under the rule stated by Mr. Justice Holmes in *Buckeye Powder Company* v. *DuPont Powder*

Company, 248 U. S. 55. That was a triple damage suit under the Sherman Act, and in confirming the judgment for the defendant Justice Holmes said, at page 65:

> "* * * Several exceptions were taken to the exclusion [fol. 544] of statements by third persons of their reasons for refusing or ceasing to do business with the plaintiff. We should be slow to overthrow a judgment on the ground of either the exclusion or admission of such statements except in a very strong case. But the exclusion in this instance was proper. The statement was wanted not as evidence of the motives of the speakers, but as evidence of the facts recited as furnishing the motives."

Evidently he is ruling upon this hearsay statement of the dealer as furnishing motive prompting the dealer not to deal with his company. It is exactly in point, your Honor, and it is hearsay, and I move to strike it on that ground.

Mr. Driscoll: Your Honor, the contracts with this particular station which are in evidence and which are contracts offered as Government's Exhibits 2 and 4, the sublease which is Government's Exhibit 5, and dealer agreement TBA substantially the same as Government's Exhibit 4; those provided for the exclusion of the competitive lubricating oils and greases. And this testimony is offered as evidence of the operation of those exclusive clauses.

Furthermore, your Honor, the allegations of the complaint here are a continuing one and in the "effects clauses" or in the number of the effects it would seem to me that the Government is entitled to show what the operators themselves [fol. 545] interpreted these contracts as being.

Mr. Hall: If the court please, that is exactly in line with the opinion I have just read. The evidence is barred where the evidence desired is the facts recited as furnishing the motive. The statement in itself which was made by this dealer to this witness as a notive, as a state of mind of the dealer himself, has no relevancy.

What the Government is trying to prove is the real reason, the real fact underlying what he told this witness as prompting him not to deal with this witness' company. Now, that is hearsay within the rule stated by Mr. Justice Holmes.

The Court: I cannot see how you can bind the company in this case to an interpretation of the contract by outsiders. You may show what the effect of the contract was. My only object in allowing the testimony was to find out whether this was preliminary negotiation in which certain commitments were made or expressions given by this witness that might be binding on the company. And certainly the statement of a dealer as to why he ceased to do business, to handle the company's product and preferred another, would not be binding on them.

Mr. Driscoll: It is not offered for the purpose of binding Standard Oil, if the court please.

The Court: How he understood it does not matter. It is [fol. 546] how he acted, how he acted.

Mr. Driscoll: It is offered as evidence as what he did and what the acts were and what the effects of the acts were.

The Court: General restraint of commerce does not occur in the minds or hearts of men. It occurs, to apply the language of Mr. Justice Holmes used on another occasion, "in the market place." Whether the contract has the tendency is to be determined from its wording and from its effect.

The law does not punish intentions not carried into effect, and it is a truism of equity that the injunctive power of the court is never used to allay somebody's fears as to something that might happen. We are not interested in what might have happened. We are interested in what happened as a result of these contracts.

The objection is sustained.

Mr. Hall: The motion to strike will be granted, your Honor?

The Court: Will be granted; yes.

Mr. Driscoll: If the court please, the Government at this time would like to make an offer of proof.

The Court: Do not make an offer of proof. I never accept an offer of proof because it encumbers the record with a lot of things. In your offer of proof you may put in things that are not germane; and your question here is plain [fol. 547] enough so that I ruled on it and no offer of proof is necessary.

Mr. Driscoll: Very well.

The Court: If you want to make an offer of proof, make it in writing.

Mr. Driscoll: Very well, your Honor. Thank you.

The Court: Remember I am also the jury in this case and it is not a case of excluding the jury and making an offer of proof. And I do not want, unconsciously, three weeks from now when you are through, or four or five weeks from now when I decide the case, to find lurking in my mind something that may be contained in your offer of proof but is not in the record.

Mr. Driscoll: Very well, your Honor.

The Court: So it is dangerous. Furthermore, this court disapproves, and in California especially we have turned our thumbs down on offers of proof. The Supreme Court of California has repeatedly said that offers of proof should not be accepted and that they are unnecessary if counsel makes his question plain enough so that it can appear from the record what he seeks to prove. It is plain enough and you have argued it fully and my ruling here is consistent with the ruling I made on the other question where you sought to prove the purpose by a leading question.

By Mr. Driscoll:

Q. From and after the time that Ferrick and Knott [fol. 548] Service Station began the sale of Standard Oil petroleum products did you sell them any further lubricating oils or greases?

A. No; I did not.

Q. Did you attempt to do so?

A. I did for a limited length of time of possibly five months.

Q. When was the last time that you called on them?

A. I would say about May or April of 1945, near April of 1945.

Mr. Hall: What was that question, please?

The Witness: May or April of 1945. Well, now, wait a minute. I beg your pardon. Could I change that?

Mr. Driscoll: Go ahead.

A. The last time I called on them was approximately 30 days ago.

Q. And did you attempt to sell them Macmillan Ring Free oil and grease at that time?

A. Yes; I did.

Q. And were you successful or unsuccessful?
A. Unsuccessful.

Mr. Driscoll: You may have the witness, Mr. Hall.
Mr. Hall: That is all.
The Court: All right; step down.
Mr. Driscoll: I will call Mr. H. G. McDonald.

[fol. 549] HENRY G. McDONALD, called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Henry G. McDonald.
The Clerk: Henry G. How do you spell your last name?
The Witness: M-c-D-o-n-a-l-d.

Direct examination.

By Mr. Driscoll:

Q. What is your residence address, Mr. McDonald?
A. I live at 9407 East Mandale in Bellflower at the present time.
Mr. Hall: I can't hear the witness. Will you speak a little louder, please?
A. I reside at 9407 East Mandale Street in the City of Bellflower at the present time.

Mr. Hall: In what place? I did not get the city.
The Witness: Bellflower.
Mr. Hall: Oh, thank you.

By Mr. Driscoll:

Q. What is your employment or occupation, Mr. McDonald?
A. I am a salesman with the C. E. Ridley Company.
Q. And the C. E. Ridley Company are distributors of Macmillan Ring-Free oils and greases?
[fol. 550] A. Correct.
Q. What territory do you cover as a salesman for these oils and greases?
A. I cover the eastern section and the south section of

Los Angeles, out east as far as the Orange County line and down south as far as Carson Street in North Long Beach, and as far north as the south side of Slauson Avenue.

Q. To what type of trade do you call on and to whom do you sell your oils and greases?

A. Primarily to service station accounts, garage accounts, and commercial accounts for resale of Macmillan Ring-Free motor oil, and also the opening up of new business accounts.

Mr. Driscoll: The Government will now ask to have marked for identification a document produced by the defense under the second subpoena, paragraph I, item No. 30, being an assignment, bill of sale, letter of acceptance, dealer TBA agreement covering premises at Long Beach Boulevard and Olive Street in Compton, California, between John William Martin and the Standard Oil Company.

[fol. 551] The Clerk: Government's Exhibit 26, marked for identification.

Mr. Driscoll: We also ask to have marked for identification, the documents produced by defendant under Paragraph I of the second subpoena, Item 31, being a sales agreement between C. G. Stewart and his wife, and Standard Oil Company of California, a dealer agreement TBA, covering the premises at 17904 Clark Street, Bellflower, Los Angeles County, California.

The Clerk: Government's Exhibit 27 marked for identification.

Mr. Driscoll: If your Honor please, the Government will now move for the admission of Exhibits 27 for identification and 26.

Mr. Hall: We object to each and all of the documents included in the exhibit marked for identification 26 and 27, upon the ground that they are irrelevant and immaterial.

The Court: Objection overruled. They may be received and marked 26 and 27.

The Clerk: 26 and 27 in evidence.

By Mr. Driscoll:

Q. Mr. McDonald, in the course of your duties as salesman, do you call on service stations generally, including

those that are operated by Chevron dealers dispensing the petroleum products of the Standard Oil Company of California?

[fol. 552] A. Yes, I do call on a few Chevron dealers.

Q. What specific dealers have you called on, if you recall?

A. I called on Gib Stewart, and Jack Martin.

Q. Do you know the address of Mr. Martin?

A. He is at the corner of Olive and Long Beach Boulevard in Compton.

Q. Have you been successful or unsuccessful in selling Mr. Martin petroleum products?

A. I have been unsuccessful.

Mr. Hall: Wait a minute. That is objected to as irrelevant and immaterial.

The Court: Objection overruled.

By Mr. Driscoll:

Q. In the course of your duties have you called on Mr. Stewart, Chevron dealer, selling petroleum products of the Standard Oil Company?

A. Yes, I have called on Mr. Stewart.

Q. Have you attempted to sell him your products?

A. Yes.

Q. Have you been successful or unsuccessful?

A. Unsuccessful.

Q. When were those calls, if you recall?

A. They were within the last month; I would say approximately three weeks ago.

Q. Have you called on Chevron accounts and dealers [fol. 553] prior to that time?

A. I have, a few, yes.

Q. With respect to those, have you been successful or unsuccessful?

A. Unsuccessful.

Mr. Hall: No proper foundation has been laid as to time and place and——

The Court: Lay a better foundation.

By Mr. Driscoll:

Q. How long have you been a salesman for Ridley & Company?

A. 8 months.

Q. When, if you recall, did you ever call on a Chevron Standard Oil service station dealer? When was the first time you called?

A. I have been calling on them since March of last year.

Q. Were you successful in selling them?

A. Unsuccessful.

Mr. Hall: Just a minute. I have to strike the answer of the witness, to give me an opportunity to object.

The Court: Yes.

Mr. Hall: There is no indication of place, time, or parties, your Honor, and I object upon the ground that no proper foundation has been laid, and move to strike the answer of the witness.

[fol. 554] The Court: It may be stricken. Lay a better foundation.

Mr. Driscoll: Your Honor, the witness has testified as to the territory his business consists of. I don't want to argue after your Honor has ruled.

The Court: Read the question.

(Question read by the reporter.)

Mr. Hall: We haven't any way of meeting this testimony, your Honor. We don't know who he is talking about.

The Court: I will sustain the objection. Before he is asked whether he was successful or unsuccessful, he ought to mention, if he can, the dealer. If he knows him by name, he ought to mention him.

Mr. Driscoll: You may cross examine.

Cross examination.

By Mr. Hall:

Q. You say you have been a salesman for 8 months?

A. With the C. E. Ridley Company, that's right.

Q. What was your occupation before that?

A. I was salesman for the MacMillan Petroleum Corporation.

Mr. Hall: That is all.

The Court: Call your next witness.

[fol. 555] HENRY G. AKERBERG, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Henry C. Akerberg.

Direct examination.

By Mr. Driscoll:

Q. What is your residence, Mr. Akerberg?

A. 1481 South Crest Drive, Los Angeles.

Q. What is your business or occupation?

A. I am the general sales manager of the Ringfree Division of the MacMillan Sales Corporation.

Q. Where are their offices?

A. Our head office, or home office, is in Los Angeles.

Q. What is the business of the MacMillan Petroleum Corporation?

A. Producers, refiners and marketers of petroleum products, our main line being MacMillan Ringfree Motor oils and greases.

Q. How long have you been employed by the MacMillan Corporation?

A. 18 years.

Q. Prior to that time did you have some experience in the oil business?

A. I have been with MacMillan all my time.

[fol. 556] Q. What has been the extent of your experience in your employment with the MacMillan Corporation?

A. I started out as a service station attendant, and I have been in the sales force, in a sales capacity, from then on, through the various departments, and various positions.

Q. As general sales manager, Mr. Akerberg, what, generally are your duties and responsibilities?

A. Well, I report to Mr. MacMillan direct, the head of the company. I am in charge of distributor sales and branch office sales.

Q. In what area or territory?

A. Throughout the United States.

Q. Does the MacMillan Petroleum Corporation distribute and market their products throughout the States of

California, Oregon, Washington, Idaho, Utah, Nevada and Arizona?

A. They do.

Q. Is this distribution or marketing under your supervision?

A. Yes.

Q. What is the source of the lubricating oils and greases that are distributed and marketed by the MacMillan Corporation?

A. Our lubricating oil is refined in Norphlet, Arkansas, which is about 8 miles north of ElDorado, and is shipped from that point to distributors. Our greases are [fol. 557] manufactured by a grease concern near Kansas City, Missouri out of our lub stuff.

Q. Please inform the Court of the method and manner by which the MacMillan Petroleum Corporation distributes and markets their products from the refineries and sources you have indicated, throughout the Western area?

A. Our entire marketing through the Western area is handled by distributors. These distributors have definite territories to operate in. They obtain their oils and greases in carload lots direct from the refinery.

In Southern California they obtain some of their products from our packaging plant in Long Beach. This oil is shipped to the distributors in carload lots to take care of orders that they have on hand and to take care of orders that they are continually obtaining.

Sometimes carload lots are shipped direct to the ultimate buyer. The distributors have their own sales forces. They develop all types of accounts,—resale and commercial. They have zone distributors under them, that take care of specific parts of the territory, who also buy in carload lots or part cars.

Q. Is that operation much the same, or similar in most all of the States that you have indicated?

A. Yes.

Q. With respect to the movement or flow of your [fol. 558] products, is it frequent, constant, or what is the nature of it?

A. Of what?

Q. Of the flow or accomplishment of your orders?

A. The distributors send their orders direct to the refinery. Some of them send them in to me, and I send

them to the refinery. The oil is shipped, as I say, in carload lots, and given to the distributors, who, in turn, make their deliveries to their accounts. Many of the accounts that the distributors handle are on a contract basis, and there is a continuous need of oil; or the flow of oil, as you have put it, to take care of those accounts. As I say, there are some accounts who obtain their oil direct from the refinery, on distributor orders—large buyers.

Q. Does your sales organization sell generally to retailers, retail outlets, including service stations?

A. Approximately 75 to 80 per cent of our volume is through resale accounts, the balance being commercial and industrial.

Q. Has there been any period of time in which MacMillan Petroleum Corporation sold directly itself in a manner different from the distributorship to which you have testified?

A. Yes, up until August of last year we operated branch offices in Los Angeles and San Francisco, and had our own sales force. At that time, about last August, we [fol. 559] turned those two markets over to distributors.

Q. Mr. Ackerberg, you are familiar with the grades, brands, qualities of oils bought and used generally by the motoring public, including those which are produced, refined and distributed and marketed by Standard Oil Corporation?

A. Yes.

Q. Are those oils and greases, including those which are marketed under the brand names of the Standard Oil Corporation, comparable to the MacMillan Ringfree lubricating oils and greases?

Mr. Hall: That is objected to upon the ground that no proper foundation has been laid; it calls for the conclusion and opinion of the witness, for which there is no basis in the testimony.

The Court: Read the question.

(Question read by the reporter.)

The Court: You may answer.

A. They are.

By Mr. Driscoll:

Q. Do you or do you not—I have forgotten, Mr. Ackerberg, whether you so testified,—that a part of your duties as general sales manager is to supervise sales forces or sales organizations?

A. I am in charge of all distributor sales and branch office sales, which takes in the entire distributor sales throughout the United States, of MacMillan oils and greases.

[fol. 560] Q. Is it or is it not the policy of the MacMillan Petroleum Corporation to solicit business from service station accounts generally, including those which operate Chevron stations dispensing the brands of the Standard Oil Company of California?

A. We call on all types of legitimate resale accounts, which, of course include Standard stations.

Q. In your sales or solicitation of the Chevron stations dispensing brands of the Standard Oil of California, have you attempted to sell them MacMillan Ringfree oil?

A. I have not.

Q. Is it the policy of the MacMillan Petroleum Corporation to attempt to sell them——

Mr. Hall: That is objected to as irrelevant and immaterial.

The Court: I will sustain the objection to that question. The question is not whether it is the policy. He says he has solicited business, so evidently he is seeking business from legitimate outlets.

The Witness: I have not personally. I thought that was what you meant.

The Court: I will sustain the objection to the last question, and the answer will be stricken.

By Mr. Driscoll:

Q. Have you been successful or unsuccessful, if you know, in selling to Chevron stations?

[fol. 561] Mr. Hall: Just a minute——

The Court: That is too general. I think he ought to be able to give you instances, if not as to the person, as to the city and location, and the number of persons in charge of Chevron stations on whom he called. The objection to the last question will be sustained.

By Mr. Driscoll:

Q. Do you know, Mr. Ackerberg, whether or not your company sells their lubricating oils and greases to the Chevron dealers who handle Standard Oil brands?

A. Our distributors occasionally make a sale to a Chevron station, but very seldom. I understand——

The Court: No, that is a sufficient answer. Don't emphasize it, because it might not be material.

Mr. Driscoll: You may examine, Mr. Hall.

The Court: Cross examine.

Cross-examination.

By Mr. Hall:

Q. You said you had been with the MacMillan Company 18 years?

A. That is correct.

Q. When did the MacMillan Company, to your knowledge, first begin the sale of its products through retail dealers?

A. We are celebrating our twenty-fifth anniversary this year.

[fol. 562] Q. I think you said that it was only recently that you started the distributor system?

A. No, we had distributors since 1934, and we have had distributors on the West Coast for a great number of years. We did operate in Los Angeles and San Francisco direct, that is, with our own sales force, but last fall, about the 7th of August, we turned these two offices over to distributors.

Q. While you were operating in San Francisco and Los Angeles without distributors your organization sold petroleum products direct to retail outlets?

A. That is right.

Q. You had leases and subleases, and documents of that kind, didn't you, with respect to the dealers that handled your products?

A. No, we did not. This was as to the MacMillan Ringfree Lubricating Oil, only there were no leases involved.

Q. I am asking you about the business of the MacMillan Company. The MacMillan Company sells gasoline, doesn't it?

A. I am not in that department.

Q. You know of your own knowledge the MacMillan Company sells gasoline, don't you?

A. Yes, that is right.

Mr. Driscoll: I object to this line of questions on the ground that they are not within the limits of the direct examination. No testimony has been offered whatsoever a- [fol. 563] to gasoline.

Mr. Hall: My notes then are misleading.

The Court: He talked of lubricating oil, but that does not limit the inquiry. You may ask him if he also sold gasoline. Overruled.

By Mr. Hall:

Q. Your company sells gasoline, doesn't it?

A. That's r ght.

Q. And has sold gasoline for a great many years, hasn't it?

A. That's right.

Q. In what place?

A. I don't believe that any went outside of California. I am not sure.

Q. The MacMillan Company has had MacMillan dealers, hasn't it, for a number of years?

A. Yes.

Q. There have been quite a lot of service stations scattered around California painted with the design and format prescribed by the MacMillan Company, hasn't there?

A. I believe there has.

Q. Those stations are not split pump accounts, are they? Don't answer that until counsel has a chance to object.

Mr. Driscoll: That is objected to as going far afield [fol. 564] from the examination in chief, as to their service stations or setup and split pump accounts.

The Court: I am inclined to agree with that.

Mr. Hall: Counsel asked this witness if he developed all types of accounts. I suppose he means gasoline accounts as well as lub or oil accounts.

The Court: We are not interested in any phase of the business dealing with the stations. This question deals with stations, with which they may have agreements, in which we are not interested.

Mr. Hall: I agree with your Honor. I withdraw the question.

Q. How many of those distributors are there? Let us take California; how many distributors are there that handle lubricating oil for the MacMillan Company, in California.

A. Approximately 13.

Q. In the other six Western States,—I mean by that, Oregon, Washington, Nevada, Utah, Idaho and Arizona,—how many are there?

A. Six—seven. Correct that.

Q. In answer to a question put to you by counsel, I think you said—correct me if I am wrong—that the lubricating oil and greases that MacMillan puts out were comparable to other lubricating oil and greases sold generally. Do you recall that testimony?

[fol. 565] A. The premium type, yes.

Q. Have I quoted you correctly on that?

A. Yes.

Q. What other lubricating oil or greases, competitive with MacMillan products, were you talking about when you answered that question?

A. I am speaking of the better types, such as Quaker State, Standard Oil, Kendall, Wolf's Head, RPM, Shell X100. The better oils.

Q. And those better oils have been sold in California and these other six Western States for a number of years?

A. That's right.

[fol. 566] Q. Can you give me the names of some more companies that would come within that category?

A. That we consider premium products?

Q. I don't know what you mean by premium products, but you go ahead and give me the names of the companies and I will ask you what you mean by premium products after that.

A. Do you mean just in the western states?

Q. The western states I mentioned, yes, and California.

A. Veedol, Triton, Richlube, Titus. How many do you want?

Q. Just as many as you can recall offhand.

A. Well, that gives you an idea of the type I mean.

Q. Well, I don't want an idea of a type. I want some names.

The Court: If you know any more trade names, give them. Each of those is a trade name of a particular company, isn't it?

The Witness: That is right. They are better oils.

The Court: Richlube is Richfield Company, isn't it?

The Witness: Yes.

The Court: Titus is what?

The Witness: Warren Refining, I believe, or Hyvis Oil Company of New York.

Mr. Driscoll: Are you going to pursue that line, Mr. Hall?

[fol. 567] The Court: Do you know of any other names? Can you think of any other names at present?

The Witness: Conoco.

The Court: Did you give us any Mobil?

The Witness: Mobil?

The Court: Did you give us that?

The Witness: No.

The Court: All right. That is the General Petroleum, isn't it, Mobil?

The Witness: Mobiloil.

By Mr. Hall:

Q. Those companies that you have mentioned in your last answers have been doing a limited oil and grease business in the seven western states for a number of years?

A. Yes.

The Court: Are you through with the witness, Mr. Hall?

Mr. Hall: No. I am just going through my notes. I will be done in just a moment.

Q. There are, I think you said, certain gasoline service stations, at least in California, that are MacMillan stations; isn't that correct?

A. Yes.

Q. Now, those MacMillan stations, I assume, handle the MacMillan brands of lubricating oils and greases, do they not?

[fol. 568] A. As well as others.

Q. They handle others, do they?

A. Yes.

Q. What others do they handle?

A. They handle some outside oils.

Q. Now, just name them.

A. Pennzoil, Quaker State. I am not familiar with the names of cheaper products, but I know they do handle some western oils.

Q. Cheaper western oils. Any others?

A. Not that I know of.

Q. What arrangement does Pennzoil have with MacMillan which results in the distribution by MacMillan of Pennzoil?

Mr. Driscoll: Now, just a moment, Mr. Ackerberg. That, your Honor, is objected to as attempting to reach the same field.

The Court: That is right. The objection will be sustained.

By Mr. Hall:

Q. In California and elsewhere there are a number of retail dealers that handle MacMillan oils and greases who are handling some other brand of gasoline, is that correct?

A. That is right.

Q. Now, referring to those particular dealers what equipment do you furnish those dealers for the purpose of purveying the oils and greases?

[fol. 569] Mr. Driscoll: That is objected to, your Honor, as a continuation of the same line of questioning.

The Court: The objection is sustained.

By Mr. Hall:

Q. What quantity of lubricating oil was sold in the seven western states—and I am speaking now of the MacMillan lubricating oil or this brand name, that you speak of—I forget what it is—how much of that was sold in the seven western states during the year 1946, approximately?

Mr. Driscoll: Objected to, your Honor.

The Court: No. That bears on the volume of business. I think that has a bearing on the extent of the restraint.

Mr. Driscoll: It bears upon the volume of their trade, but it does not bear upon——

The Court: It may with the other, that is right.

Mr. Driscoll: It has no bearing upon the volume of Standard Oil's business, which is the total amount of trade that is restrained.

The Court: No. When you are producing a person who testifies as to attempts to sell, he purports to know what, if any, supply they have available. Supposing the amount that they would have available for outside trade would be a very small percentage of the needs of a large number of stations, the question would arise whether you have to keep the competition open for an infinitesimal amount that [fol. 570] might trickle through.

Mr. Driscoll: If ultimately——

The Court: What?

Mr. Driscoll: Excuse me, your Honor. I desire one more comment if you are finished.

The Court: Yes; all right. I was looking the other way so I did not see you get up.

Mr. Driscoll: Basically, your Honor, it is the character of the restraint that is complained of in this case.

The Court: I beg pardon?

Mr. Driscoll: It is the character of the restraint and not the volume of it that is complained of.

The Court: Yes. Volume is also a criterion, too. Volume is a criterion, especially under the Sherman Act.

Mr. Hall: Do you want the question read, Mr. Ackerberg?

The Witness: Yes, please.

The Court: You want to bear in mind, gentlemen, this principle: That in a case like this when they are talking about restraint of commerce, it is an entirely different concept than the concept of commerce in a regulatory area. For instance, in the Wages and Hour cases and the National Labor Relations cases an infinitesimal amount of commerce is sufficient to bring them within the rule. Incidentally, that ruling was made in a case which arose in California, the Santa Cruz Fisheries case, where our Cir- [fol. 571] cuit Court disagreed as to the quantum of commerce that is necessary. Judge Wilbur held that it should be at least 50 per cent or more commerce involved before the Federal restrictions applied, and the court in that case ruled that the amount of commerce is not material.

But when you are talking about restrictions and when you are talking about what is reasonable and unreasonable, the quantum of the restriction of commerce is important.

Mr. Dixon: May I be heard just a moment, your Honor?

The Court: Yes.

Mr. Dixon: I would like to again suggest that the commerce which the Government contends is restrained here is the commerce flowing from Standard to these stations. In other words, that is the actual amount of commerce, some figures of which are already in, which is the subject of the restraint in this case.

The Court: They are restraining other people's commerce.

Mr. Dixon: That is right.

The Court: In other words, that commerce is determined by reference to what other commerce would be available.

Mr. Dixon: Yes, sir.

The Court: Supposing there is not another company here that could supply five per cent of that commerce. The question would arise whether you are going to throw the market open for the sake of that and disallow an [fol. 572] arrangement which the Supreme Court says is valid unless it results in restriction in commerce.

I still insist that 299 U. S., the case cited yesterday, the General Motors case, which provided specifically that a person could not use any parts other than Chevrolet parts and parts manufactured by General Motors is still the law today and has not been modified by any subsequent cases.

So we have to have a comparison between the two—the question of restraint and commerce to whom, and what amount of commerce are they keeping out by these arrangements, as I see it.

Mr. Dixon: Yes, your Honor.

The Court: All right.

Mr. Dixon: And we concur in that view, and the commerce here is the commerce in the petroleum products, first; and second, in the tires, tubes, batteries and automotive accessories.

The Court: That is right. We will get to that. We are talking——

Mr. Dixon: If the court please, for a moment. It operates two ways. The restraint operates to prevent the dealer here from exercising his right to purchase those commodities in a competitive market, as well as preventing

competition of the other suppliers from selling that market.

The Court: That is what you have alleged in your com- [fol. 573] plaint.

Mr. Dixon: That is right.

The Court: I know that.

Mr. Driscoll: And for that reason we submit that even though there may be small dealers or large dealers, it is immaterial, that are in competition theoretically for that market, if they were not precluded from competition by these contracts.

The Court: That is an argument to be made at the conclusion of the case. I know the theory of your case, but I still insist that because this is an equity case it is permissible to have for the record, for the purposes of comparison, the figures which these questions seek to elicit from this witness. What effect is to be given to them is to be determined later on.

Mr. Dixon: We appreciate your Honor's views. I rose to point out to your Honor that the objection to this particular question was based on the theory of the Government's case.

The Court: That is all right. I do not object, gentlemen, to any discussion, especially in a case of this character. We have assigned several weeks to try it, and within reasonable limits I will hear your reasons as we go along. But I do not wish to make every objection the occasion for a restatement about what I know is in the pleading [fol. 574] and what I know the issues are, that is all, just in the interests of economy of time. Because three weeks have been assigned to this case does not mean necessarily that you must take it. If you take a week or two weeks, I am quite certain I can use the other time to great advantage.

Now let us get back to the question. Will you read the question?

(Question read by the reporter as follows:

"Q. By Mr. Hall: What quantity of lubricating oil was sold in the seven western states—and I am speaking now of the MacMillan lubricating oil or this brand name that you speak of—I forget what it is—

how much of that was sold in the seven western states during the year 1946, approximately?").

Mr. Driscoll: May the record note our objection?
The Court: Yes. I have overruled the objection.

A. Do you want sold by us to distributors, or distributors to the trade?

By Mr. Hall:

Q. Well, I would like the over-all amounts that reached the buying public.

The Court: Give the whole of it. You do not sell direct to the trade, do you?
The Witness: No. Our distributors sell it to the trade.
The Court: Then, of course, you indicate both amounts, if there is any discrepancy between the two. If they sold [fol. 575] less than you placed with them, why, all right.

A. Well, sales to the trade, 1946, was 1,865,429 gallons.

By Mr. Hall:

Q. Are you refreshing your memory from some document?
A. Some notes.

The Court: Yes; the witness has them before him.
Mr. Hall: May I see them?
The Witness: This was requested in the subpoena.
The Court: Did the reporter get that? Please don't whisper. We don't whisper here.

(Remark read by the reporter.)

The Court: That is very important, a remark like that, because it indicates that you brought that in anticipation of needing it.

By Mr. Hall:

Q. How many——
The Court: May I take a look at it?

By Mr. Hall:

Q. How many retail outlets dispensed MacMillan lubricating oil during the year 1946, approximately?

A. I don't have those figures with me.

Q. Could you give us an approximation?

A. I would rather check the records to give you a figure on that.

Q. Could you give us that——

A. That may be a thousand or two off either way.

[fol. 576] The Court: If that is the marginal variation, give us what your best recollection is. We won't tie you to an exact figure, just an approximation so far as you remember it.

A. Around nine or ten thousand accounts.

By Mr. Hall:

Q. And that is in all these seven western states?

A. Resale accounts.

Q. Yes. And that would be for the year 1946, I think I asked you?

A. No. '46 was not that high.

Q. Oh, you were higher in '47 than '46?

A. Yes.

The Court: Just answer, please. Don't just shake your head. We don't ad lib here. When we get television in the court room we will catch your nod.

The Witness: All right.

By Mr. Hall:

Q. What were your arrangements with distributors? Can you tell us a little about that, a picture of what your distributor does, how he handles your products and how he deals with your company in the dispensing of lubricating oils?

The Court: You know, maybe Mr. Dixon does not know what I am referring to, but you gentlemen are old timers in Los Angeles. I am going to do a Monroe. I am going [fol. 577] to say the objection that should have been made is sustained. We call that "the Monroe", the name of a very distinguished judge of the Superior or Municipal Court, Charles Monroe. He used to protect himself, when

lawyers did not object, by saying "The objection which should have been made is sustained." However, counsel arose so I merely anticipated the objection would be made.

Mr. Hall: All right. No further questions.

The Court: Any redirect?

Mr. Driscoll: Yes, your Honor.

Redirect examination.

By Mr. Driscoll:

Q. Among the brands that you mentioned, Mr. Ackerberg, as being comparable to your oil was the brand RPM. You were referring then to the brand that is dispensed and marketed and sold by Standard Oil Company of California?

A. Yes, sir.

The Court: Gentlemen, from my own curiosity I will ask Mr. Hall. I have always been curious to know what those initials stood for. I never understood what they stood for. Does anybody know?

Mr. Hall: I will have to refer to the expert, your Honor.

The Court: Well, it is all right. I don't want to interrupt, but I have always been curious to know.

[fol. 578] Mr. Thompson: If you want to know, I will get it for you.

The Court: All right. Go ahead.

By Mr. Driscoll:

Q. And of those brands, the other brands and other names that you mentioned, they are sold throughout this western area?

A. Yes.

Q. Now, as to the volume that Mr. Hall inquired about, will you refresh my memory on that: Was that as to the volume of 1946 or '47?

The Court: No. He said '7, in 1947. He said in 1946 it was not so high. Isn't that correct?

The Witness: '46 in volume was higher than '47 in volume. He asked me about the number of accounts we had, and after answering the question I wouldn't swear to it, because the number was pretty close together.

The Court: All right.

The Witness: But our volume in '46 was greater than in '47.

The Court: In other words, you sold less goods in '47, is that it?

The Witness: That is right.

The Court: But you had a larger outlet, you had more customers who sold less, is that it, in 1947?

The Witness: I am pretty sure we had more outlets. I [fol. 579] would have to check the figures because all of my figures are national. They are not broken down into this number of states.

The Court: All right.

By Mr. Driscoll:

Q. What, Mr. Ackerberg, among other things, if any opinion you have upon it, do you attribute the reduction in the volume of your sales in 1947 as compared to 1946?

Mr. Hall: Just a minute. If the court please, that calls for the witness' conclusion without foundation for the question.

The Court: Yes; I will sustain the objection as not redirect examination, also, but chiefly I think it is not material.

Mr. Driscoll: Developing facts which were inquired upon in cross examination, your Honor.

The Court: That does not make any difference. Merely because matter was gone into does not open up the subject for inquiries that are not germane. The reason for the falling off of business is not material in this case. If you show that his supplying of Standard Oil outlets, whether the Standard Stations or the Chevron or any of the others, was less in one year than another, then you might inquire if he knew what caused it. But there is no evidence in the record which is related to those preliminary inquiries.

[fol. 580] By Mr. Driscoll:

Q. Do you know whether or not your sales through Chevron Standard Oil outlets in '47 were less than they were in '46?

A. I don't know about Standard's specifically.

The Court: As I understood you to say, so far as your records show to Standard Stations, whether they are

Chevron or regular Standard, your sales were sporadic; isn't that true?

The Witness: We never did have much volume through Standard Stations at any time.

The Court: No volume at any time. All right.

By Mr. Driscoll:

Q. Do you attribute that factor to have any significance in your sales program?

The Court: No. That is an inference to be drawn. I will sustain the objection.

Mr. Driscoll: That is all, then, your Honor.

The Court: That is all.

However, this: If you put a solicitor on the stand who testifies that the accounts were opened and then abandoned, then of course that question might be material. It is a question of argument and it is an inference rather than a question subject to direct testimony.

All right; step down.

Well, gentlemen, you did very well. You just concluded the examination of this witness and we will take our regu- [fols. 581-582] lar adjournment until tomorrow morning at 10:00 o'clock.

(Brief discussion off the record.)

(Whereupon a recess was taken until 10:00 o'clock a. m. of the following day, Thursday, May 6, 1948.)

[fols. 583-584] IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

Honorable Leon R. Yankwich, Judge Presiding

No. 6159-Y-Civil

UNITED STATES OF AMERICA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., Defendants.

REPORTERS' TRANSCRIPT OF PROCEEDINGS
Los Angeles, California
Thursday, May 6, 1948

APPEARANCES:
(As heretofore noted.)

[fol. 585] Los Angeles, California, Thursday, May 6, 1948, 10:00 A. M.

IRVINE H. SHEARER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Clerk: What is your name, please?
The Witness: Irvine H. Shearer.

Direct Examination

By Mr. Driscoll:

Q. What is your business or occupation, Mr. Shearer?
A. Distributor for the Kendall Refining Company.
Q. What is the name of the firm that you have employment or occupation with?
A. The Buck-Shearer Oil Company.
Q. What position do you occupy with them?
A. I am president of the Buck-Shearer Oil Company.
Q. What is the business of the Buck-Shearer Oil Company?

A. Distributing Kendall lubricants, motor oils, greases and gear lubricants.

Q. From what source do you get your supply of Kendall lubricants, oils and greases?

A. The Kendall Refining Company at Bradford, Pennsylvania.

Q. Over what area do you represent the Kendall Refining Company here?

A. Los Angeles, Orange, Santa Barbara and Ventura [fol. 586] Counties.

Q. Mr. Shearer, how long have you been connected with the Buck-Shearer Company?

A. Since December, 1934.

Q. Did you have association or connection with the oil business prior to that time?

A. Yes, sir.

Q. With whom, and how long?

A. With the Kendall Refining Company, starting October 1st, 1919, up until about the 1st of July of 1934, when I had a breakdown. I resigned then, and came West, and then we formed the Buck-Shearer Oil Company.

Q. What position did you occupy or hold with the Kendall Refining Company?

A. I was oil sales manager.

Q. Will you just briefly relate to the Court what your method of distribution and marketing of the Kendall oil in your territory is?

A. Here?

Q. Yes.

A. Well, the oil—all of the lubricants that we use are obtained from the Kendall Refining Company, Bradford, Pennsylvania, shipped here in carload lots, stored in the Bekins warehouse at 3625 South Grand Avenue; from there we distribute on orders received from our salesmen, myself [fol. 587] included, as a salesman, because I cover a territory also.

Q. From your past experience in connection with the Kendall Oil Refining Company, are you familiar with their distribution system in the Western area, that is, Washington, Oregon, California, Idaho, Nevada and Arizona?

A. Yes, sir.

Q. What is that system?

A. They have distributors, the same as our company. They operate no direct branches in this area. In fact, the only direct branches they operate are adjacent to the refinery where gasoline is involved.

Q. And the distribution pattern, then, is through their distributors to retail outlets?

A. Yes, sir.

Q. To whom do you distribute through your organization the products of the Kendall Oil & Refining Company?

A. Service stations, garages, car dealers, commercial and industrial accounts.

Q. Mr. Shearer, does your organization, your sales organization, solicit the accounts of the products which are handled and dispensed by the so-called Chevron dealer handling products of the Standard Oil Company?

A. No, sir.

Mr. Hall: May I have the question read?

[fol. 588] Q. Have you any explanation for that?

A. We——

Mr. Hall: Now, just a minute. I object to that as incompetent, irrelevant and immaterial.

The Court: That is too broad, Mr. Driscoll. If you are going to show attempts to deal with them, his attention should be called to specific things. I will sustain the objection.

By Mr. Driscoll:

Q. Do you sell to the Chevron stations handling the products of the Standard Oil?

A. We have on several occasions where the order was phoned to us, usually for a case of oil where some particular customer requested that Kendall be made available to them at that point. But I would be unable to give you names of those customers because no record was kept at the time, other than the regular sales record, because we were not permitted to establish a sign or identification mark at the station, and it has always been the policy of the Kendall Refining Company and ours to make every possible effort to have an identification of our product where it is being sold.

Q. From your experience background, Mr. Shearer, in the oil business are you familiar generally with the grades and qualities of oil that are being used by motorists generally?

[fol. 589] A. Yes, sir.

Q. Are you familiar with the grades and qualities of the oils which are produced, refined, marketed, and distributed by the Standard Oil Company?

A. Yes, sir.

Q. And is your Kendall oil comparable to that which is distributed and sold by the Standard Oil?

Mr. Hall: Just a minute. That is objected to as calling for the conclusion of the witness, calling for speculation and conjecture, and no proper foundation being laid.

The Court: I think it would call merely for his general knowledge.

Mr. Hall: The question asks whether it is comparable, as I recall it. I do not think that is general knowledge. I think that is just a conclusion, speculation and conjecture.

The Court: I think we permitted another witness to state the same thing. The objection is overruled.

Mr. Driscoll: Your answer?

The Court: He may answer.

Mr. Driscoll: Do you want the question?

The Witness: I would like that question again, please.

Mr. Driscoll: Would you read the question, Mr. Reporter?

[fol. 590] (Question read by the reporter.)

Mr. Driscoll: Your answer?

A. Yes, sir.

Mr. Driscoll: I did not hear it.

A. Yes, sir.

Mr. Driscoll: You may examine, Mr. Hall.

Cross-examination.

By Mr. Hall:

Q. What were those counties of Southern California in which your organization distributes Kendall oil?

A. At the present time it is Los Angeles, Orange, Ventura, and Santa Barbara. I would like to qualify that,

to further answer your question, and that is the fact that the supply of oil which has been available to us has not been sufficient for us to be active in Ventura or Santa Barbara Counties; so that our activities have been confined for the past several years just to Los Angeles and Orange Counties.

Q. In other words, during the past seven years you have sold all the lubricating oil that you could get your hands on, haven't you?

A. The past several years, yes, sir.

Q. Your acquaintance with this Southern California situation goes back, as I understand, to 1934?

[fol. 591] A. Yes, sir.

Mr. Driscoll: Just one moment. I would like to have counsel go somewhat more into detail into the broad term "situation". I do not know what the witness would refer to.

The Court: It is a preliminary question. He is going to go into the detail.

By Mr. Hall:

Q. Since 1934 and in the counties you have mentioned your distribution has been through salesmen, hasn't it?

A. Yes, sir; salesmen and sub-distributors.

Q. Oh, you have sub-distributors?

A. We have sub-distributors; yes, sir.

Q. How many of those do you have for those counties you have mentioned?

A. We have just three at the present time.

Q. How many salesmen have you at the present time for these counties you have referred to?

A. Well, aside from the sub-distributors we have three salesmen of our own.

Q. Do you employ any form of contract in connection with your sale of lubricating oil products?

Mr. Driscoll: Just one moment. That is objected to, your Honor, as irrelevant and immaterial.

The Court: The objection is sustained.

By Mr. Hall:

Q. To how many retail outlets did you sell lubricating [fol. 592] oil products in the counties you have referred to in the year 1946?

A. I would say approximately 600.

Q. And how many in the year 1947?

Mr. Driscoll: One moment. I am sorry I was engaged. I did not hear the answer to the question before this one, Mr. Reporter.

The Court: All right.

(Answer read by the reporter.)

Mr. Driscoll: Thank you.

By Mr. Hall:

Q. Now, how many during the year 1947, approximately?

A. Oh, about 500.

Q. How many during the year 1945?

A. Well, our business in '45 and '46, to the best of my recollection, was on about an even basis; so I would say around 600 in '45.

Q. How many in '44?

A. Well, it was much less at that time because we were unable to get packaged goods; that is, when I say "packaged goods" I mean canned oil or anything for the smaller buyer, and we had no container with which we could dispense it, furnishing containers such as highboys or bulk containers.

Q. That was a condition that prevailed during the [fol. 593] years the war was in progress, was it not?

A. Yes, sir.

Q. And did you sell more oil in the counties you have referred to in the year 1947 than you did in 1946?

A. No, sir. It was just the reverse.

Q. Just the reverse?

A. Yes, sir.

Q. Did you sell more in 1947 than you did in 1945?

A. No; we didn't.

Q. Did you sell more than you did in 1944?

A. Yes, sir.

Q. During 1946 how many distributors did you have?

A. We had six.

Q. How many salesmen did you have?

A. What year was that?

Q. '46.

A. '46. We had six salesmen.

Q. When a service station takes Kendall oil from you how many grades do they usually order?

Mr. Driscoll: One moment. Will you identify the type of service station? That is objected to as too broad. The witness is unable to understand that.

Mr. Hall: All right, all right.

Q. How many grades of Kendall oil do you distribute or try to distribute?

[fol. 594] A. We try to get a station or a garage to handle at least three grades of oil.

Q. Three grades?

A. Yes, sir; three weights.

Q. Three weights?

A. Yes, sir.

Q. And that would be light, medium, and heavy?

A. That would be like, say, 10, 20, and 30 or 20, 30, and 40, depending on the type of business they are in.

Q. And each one of those grades would, of course, have to be placed in a separate tank, wouldn't it?

A. If they are bought in bulk. But we also have the canned oil which we try to dispense; in fact, we emphasize distribution in cans rather than in bulk.

Q. Oh, you do?

A. Yes, sir.

Q. Do you sell a great deal more of the canned product than you do of the bulk product?

A. Yes, sir.

Q. Could you give me about the proportion of one and the other that you sell?

A. I think I am safe in saying that about 60 per cent in cans and 40 per cent of bulk.

Q. In answer to a question put to you by plaintiff's counsel I think you mentioned comparable oils. Will you give [fol. 595] us the makes of oils which you regard as comparable with the oils that you purvey?

A. Shall we get into a—we handle strictly a Pennsylvania oil and in the Pennsylvania class.

Q. Now, I did not ask you for an explanation. I asked you for names. Just run down the list of oils which you regard as comparable with your oil.

A. Pennzoil, Quaker State, Hyvis, Valvolene are the better-known Pennsylvania oils.

Q. Well, is there anything else?

A. Then we get into a discussion of——

Q. Are there any others that are comparable to your oils?

A. Well, there is room for discussion.

Q. What is that?

A. I say, there makes room for discussion.

The Court: A comparison does not mean——

A. Well, they are generally accepted by the public. Then the leading brands of all of the major companies, such as your RPM, Shell X100, Richfield Pennsylvania oil, Signal Pennsylvania, associated Veedol, Union Triton. They are in the generally accepted high-grade oil class.

Q. Yes. They all compete with your oils?

A. Yes, sir; they do.

Q. Do you think of any others now?

[fol. 596] A. Well, there are dozens of other brands.

Q. Well, just give us one dozen others.

Mr. Driscoll: Well, your Honor, the witness has indicated that he has exhausted his recollection.

Mr. Hall: Oh, no; he has not at all, Mr. Driscoll.

A. Well, Macmillan and Gulf is one, although that is not marketed in this area.

[fol. 597] Q. Have you given me all that you can recall now?

A. All that I can recall offhand, sir.

Q. That compete with your organization?

A. That's right, yes.

Q. Those oils have been competing with Kendall oils ever since you came to California, haven't they?

A. Yes.

Mr. Driscoll: The question of competition with Kendall and other brands of oil, not Standard oil brands, is wholly immaterial.

The Court: Let us have the question and answer.

(Record read.)

The Court: I think it may go to bias. Overruled.

By Mr. Hall:

Q. Are Kendall lubricating products, and by that I mean lubricating oils and greases and whatever else Kendall sells,—are they sold outside of counties in California where the organization operates?

A. Yes, sir.

Q. They are sold throughout California?

A. Yes, sir.

Q. In what other states in the West are they sold?

A. I believe in every State in the West.

Q. You would say they were sold in Washington, Oregon, Arizona, Nevada, Utah and Idaho?

A. Yes, sir.

[fol. 598] Q. Do you know whether the sales in those States, outside of California, are through distributors, or by direct contact with the outlets?

A. They are through distributors.

Q. Are Kendall oils sold nationally?

A. Yes, sir.

Q. East, west, north and south?

A. Yes, sir.

Mr. Hall: That is all.

Redirect examination.

By Mr. Driscoll:

Q. Mr. Shearer, you have testified that during the war years you had difficulty in obtaining an adequate supply of oil?

A. More since the war than during the war years. During the war years, if I may explain, our output—that is, our sales were limited, due to the fact that we did not have the packaged goods, nor did we have highboys or other containers that we could put at the customer's place of business that would enable us to service them in bulk.

Q. But under all normal circumstances, either at that time, or at any time, now or in the future, that you have

a supply of oil, you can sell all of it that you can get, is that correct?

A. I don't know if I am right in stating this; the [fol. 599] shortage—the worst shortage that we had was during '36, and we naturally lost quite a bit of business then due to not being able to take care of it.

Q. In ordinary times, and at the present time, if you can get additional orders you could get additional oil to fill them?

A. Yes, sir.

Mr. Driscoll: That is all.

By Mr. Hall:

Q. Mr. Shearer, you were served with a subpoena by the Government to produce certain records or a compilation of figures, were you not?

A. Yes, sir.

Q. Did you produce those figures?

Mr. Driscoll: One minute, your Honor. That is objected to——

The Court: Overruled.

Mr. Driscoll: Whether we choose to produce them.

The Court: That's all right. He may answer the question.

By Mr. Hall:

Q. Have you those figures with you, Mr. Shearer?

A. I have, sir.

Q. Those figures requested you to state the sales to Chevron dealers in '46 and '47, didn't they?

A. Yes, they did.

[fol. 600] Q. What were the sales to Chevron dealers in 1946?

A. We had no record kept. I will explain in this way: When we would get an order for Bill's service station, or Bill and Joe, there was no record kept in our office to the effect of whether or not that was a Chevron station, and for that reason we were unable to compile the figures that you asked for, of Chevron stations.

Q. I did not ask for them.

A. The Government.

Q. The same difficulty, I suppose, was encountered with respect to the figures for 1947?

A. Yes, sir.

Mr. Hall: That is all.

By Mr. Driscoll:

Q. I think you testified in your examination in chief, Mr. Shearer, did you not, that your organization does not sell to Chevron service stations?

A. Yes, sir.

Mr. Hall: Just a minute——

The Court: You may answer.

A. Yes, sir.

Mr. Hall: May I have the question and answer read?

(Record read by the reporter.)

The Court: Anything further that you have, Mr. Dixon?

Mr. Dixon: No.

By Mr. Hall:

[fol. 601] Q. Didn't you testify on direct examination that there were certain sales made of Kendall products to Chevron dealers?

A. I did, sir.

Mr. Hall: That is all.

By Mr. Driscoll:

Q. Those few sales that counsel has inquired into were made, I think you testified, by telephone, upon request of the Chevron dealer for some customer he had?

A. That's right.

Mr. Driscoll: That is all.

By Mr. Hall:

Q. Did you comply with those telephone requests whenever they came in?

A. Yes, we did.

Mr. Hall: That is all, thank you.

The Court: You are zig-zagging now. I think these gentlemen who are not connected with the company may be released from their subpoena, unless you want them kept, or will bring them back on notice.

Mr. Driscoll: Yes, so far as we are concerned.

The Court: The point is this. If you want to keep somebody under subpoena subject to notice, I will do so, but unless you do, I think these men should be free to go about their business, and not have to wait until they would be called.

Mr. Driscoll: So far as the Government is concerned, they may be released.

[fol. 602] The Court: Unless you call my attention to it, that you want a particular witness to return, that will be the order. Proceed.

Irving G. Barmby, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Clerk: Your name, please?

The Witness: Irving G. Barmby.

Direct examination.

By Mr. Driscoll:

Q. Where do you live, Mr. Barmby?

A. In Sacramento.

Q. What is your occupation?

A. I am a salesman for the Inland Oil Company.

Q. What is the business of the Inland Oil Company?

A. They are distributors of MacMillan products and greases.

Q. In what territory or area do they distribute the products?

A. In Sacramento and adjacent counties—five counties.

Q. What territory do you cover for the Inland Oil Company?

A. I cover Sacramento, Placer, ElDorado, Solano and Yolo Counties.

[fol. 603] Q. What generally, Mr. Barmby, are your duties as a salesman for your company?

A. For soliciting business at service stations, garages,

agricultural accounts, industrial and commercial accounts.

Q. Do you solicit business in the stations that are operated by Chevron dealers selling products of the Standard Oil Company?

A. I do.

Mr. Driscoll: At this time, if your Honor please, the Government would ask to have marked for identification documents produced by the defendant under Paragraph I, Item 8, being dealers' TBA agreement between the Standard Oil Company and one William T. King.

The Clerk: Government's Exhibit 28, for identification.

By Mr. Driscoll:

Q. Mr. Barmby, in the course of your business, have you become acquainted with Mr. William King, who operates a service station in Rio Vista, California?

A. I have.

Q. What type of station, and what products does Mr. King sell at his service station?

A. He has a Chevron service station, and sells Standard products.

Q. When did you first become acquainted or call upon Mr. King?

A. In July of 1946.

[fol. 604] Q. And at that time did you sell him any of your MacMillan products?

A. I did.

Q. Did you thereafter at any time sell him any further MacMillan products?

A. I did.

Q. When was that?

A. In the year—the first part of the year of 1947. There was a demand for a case of MacMillan Ring-free oil.

Q. And you delivered that to him?

A. I did.

Q. Does Mr. King, in his service station, display your signs?

A. No, he does not.

Q. Did he display the oil that you delivered and sold to him?

A. No, he did not.

Q. Where did he keep or store that?

A. He stored it in the back room of the service station.

Q. Is Mr. King in any other business in the town of Rio Vista?

A. Yes, he is.

Q. What other business does he have?

A. He has a garage adjoining the service station.

Q. In connection with Mr. King's operation of the [fol. 605] garage next to the service station, have you called upon him to purchase oils for that place?

A. Yes, I have.

Q. And has he done so?

A. Yes.

Q. Have you called on Mr. King for the purchase of oil at his service station since the first part of 1947?

A. Yes, I have.

Q. Have you been successful or unsuccessful?

A. I have been unsuccessful.

Q. But you did sell him oil at his garage?

A. I did.

Mr. Driscoll: If your Honor please, the Government will move the admission of the exhibit marked for identification, Exhibit No. 28, the TBA dealer agreement between Standard Oil and William King, dated October 6, 1947?

Mr. Hall: Each of the documents is objected to as irrelevant and immaterial.

The Court: This is another TBA agreement?

Mr. Driscoll: Yes, sir.

The Court: The objection will be overruled. It may be received.

The Clerk: 28 in evidence.

By Mr. Driscoll:

Q. Are you acquainted, Mr. Barmby, with the service [fol. 606] station that is operated at the corner of 7th and H Streets in Sacramento?

A. I am.

Q. When did you first call on that station?

A. In the latter part of 1945.

Q. At that time who operated it?

A. A fellow by the name of Mr. Chase.

Q. What sort of products did Mr. Chase handle and dispense at that time?

A. General Petroleum products at that time.

Q. What brand name?

A. Mobil oils and greases.

Q. Did you sell Mr. Chase your MacMillan oil?

A. I did.

Q. Did you continue to sell Mr. Chase his oil?

A. I did.

Q. For how long a time?

A. I sold Mr. Chase our oil, Ring-free oil, until a time that he sold out to a man by the name of Ed Reese, who was operating a service station.

Q. Do you recollect when that change took place?

A. That took place in the early part of 1946.

Mr. Driscoll: The Government will ask to have marked for identification the documents produced by the defendant under Paragraph I, Item 9.

The Clerk: Government's Exhibit 29 for identification.

[fol. 607] By Mr. Driscoll:

Q. Since the time that Mr. Reese acquired this service station, and began to operate it as a Chevron dealer, dispensing the products of the Standard Oil Company, have you solicited his business for Ring-free oil?

A. I have.

Q. Have you been successful or unsuccessful?

A. I have been unsuccessful.

Q. Are you acquainted, Mr. Barmby, with the service station operated by Mr. C. S. Morgan, at Courtland, California?

A. I am.

Q. When did you first become acquainted with that service station?

A. That was in 1946.

Q. At that time who operated the station?

A. A fellow by the name of Mr. Waterworth.

Q. What products was he dispensing at that time?

A. Chevron products.

Q. Mr. Barmby, did he at that time have any other business? Was he engaged in any other business?

A. Yes, he was.

Q. What business?

A. He had a garage across the street from the service station.

Q. Did you solicit business of Mr. Waterworth for the purchase of MacMillan oil?

[fol. 608] A. I did.

Q. At his service station?

A. I did.

Q. Were you successful in selling him?

A. No.

Q. Did you solicit him for the sale of MacMillan products at his garage?

A. I did.

Q. Were you successful there?

A. Yes.

Q. Did he display your sign?

A. Yes.

Q. When did Mr. Morgan take over the operation of this business?

A. He took over in 1947, in the latter part of 1947.

Q. Have you solicited the business of Mr. Morgan at his service station?

A. I have.

Q. Have you been successful or unsuccessful in selling him?

A. I have been unsuccessful in selling him.

Q. Does he buy any oil from you at all?

A. He does. He has a garage across the street from the station.

Q. But in your solicitation of his business to handle [fol. 609] your oils at the service station, you testified that you have or have not been successful?

A. I have not been successful.

Q. Are you acquainted, Mr. Barmby, with the service station operated in Del Paso Boulevard and Orange Street, Sacramento?

A. I am.

Q. Who operates that station?

A. Mr. Alex Knutson.

Mr. Driscoll: The Government will ask to have marked for identification the document produced by the defendant under Paragraph 1, Item No. 10, being dealers' TBA agree-

ment, between Gordon Waterworth and wife, and Standard Oil Corporation, and the consent to that TBA agreement from Gordon Waterworth to Joe Morgan, under date of October 10, 1947.

The Clerk: Government's Exhibit 30, marked for identification.

By Mr. Driscoll:

Q. Have you, in the course of your duties, called on Mr. Knutson, Mr. Barmby?

A. I have.

Q. What type of station does Mr. Knutson operate?

A. He had a Chevron station, and sells Standard products.

Q. When did you first call on him?

A. Around 1946.

[fol. 610] Q. Have you been successful in selling Mr. Knutson your products?

A. I have not been successful in selling him.

Q. Are there any other service stations that you know of that you have called on who dispense the products of the Standard Oil Company of California, Chevron stations?

A. Yes, there are.

Q. Can you identify them?

A. One was Parrell & Freis, Sacramento.

Mr. Hall: May I speak to counsel? Perhaps I can shorten it.

[fol. 611] The Court: All right; go ahead.

Mr. Hall: Now, this brings up the question as to the Government's answers to our interrogatories. We have not been advised of any service station in connection with this of the nature that he is now referring to in his testimony. If the answers to interrogatories mean anything, then the witness should be precluded from going into that line of testimony.

Mr. Dixon: In behalf of the Government may I say at this time that this information concerning this particular contact was just available to the Government today, as I understand it, from this witness. The Government has complied in every respect and made every effort to comply, and has given counsel for the defendants every in-

formation that it had at the time the court entered its order concerning answers to be given to the interrogatories.

The Court: In a case of this character we should not bind too strictly either side by the admissions, especially if they are omissions. In other words, while the answers to the interrogatories lay down the pattern and it should not be departed from in any important particular, deviations or omissions should not be disallowed, because, after all, this is a court of equity. And, as Judge Wilbur taught me the first time I sat with him after my appointment to this bench in a statutory three-judge court, he said that [fol. 612] any evidence goes in a court of equity because ultimately we are supposed to disregard what is not material, which, of course, makes the sky and your particular wish or the way you feel after breakfast the limit.

However, I do not mean to promulgate any such latitude. But I think, within the limits I have indicated, any departure by either side from what is in the answers to the interrogatories will be allowed.

Mr. Hall: If your Honor please, I do not want to argue the point, but your Honor may have overlooked the form in which the Government has submitted its answers to the interrogatories, in certain cases posting us, without giving us the names of the dealers who would be referred to, they gave us area or the dates. They gave us, in other words, the intimation that they would cover dealers other than the dealers listed in their answers. No such intimation is given with respect to this witness who is now on the stand.

The Court: All right. I have already ruled.

Mr. Driscoll: The Government will ask to have marked a document produced by the defendants under Paragraph I, subpoena No. 2, TBA agreement between the Standard Oil and one A. J. Knutson, dated April 15, 1947.

Mr. Hall: Are you offering it into evidence?

Mr. Driscoll: Not yet. I am having it identified.

The Clerk: It is Government's Exhibit 31 marked for [fol. 613] identification.

By Mr. Driscoll:

Q. What business, Mr. Barmby, were Parrell & Freis in at the time that you first contacted them?

A. Well, they were in a body and fender works.

Q. What is the address of that?

A. Of the Parrell & Freis?

Q. Yes.

A. They are on Ninth Street between X and Broadway.

Q. And did you sell them Macmillan Ring-Free oil at that time?

A. I did.

Q. Did you continue thereafter to sell it to them? Do you sell them your oil now?

A. No; I don't.

Q. When did they cease buying it?

A. In the summer of 1947, of last year. It was in the latter part of the summer and I sold them one order of Macmillan Ring-Free. At the time there was some kind of a contract in with the Chevron station at Ninth and Broadway.

Mr. Hall: Now, just a minute. I move to strike out that portion of the answer beginning with the words "at the time" they were contracting with the Chevron station.

The Court: Well, that is a conclusion. That may be stricken.

By Mr. Driscoll:

[fol. 614] Q. What business are Parrell & Freis in now?

A. They are in the body and fender business.

Q. Do they have any other business besides body and fender?

A. They have a station, Chevron station.

Q. Where is that Chevron station located?

A. At Ninth and Broadway.

Q. Do you know when they acquired that Chevron station?

Mr. Hall: Just a minute. That is objected to as calling for speculation and conjecture, no proper foundation laid.

The Court: If he knows, he may answer.

Mr. Driscoll: What is the ruling?

The Court: If he knows. I will overrule the objection.

A. I don't know.

By Mr. Driscoll:

Q. Do you sell Parrell & Freis your products at the Chevron service station operated by them?

A. At present?

Q. Have you at any time?

A. I took one shipment at the Chevron station, Ninth and Broadway, last year.

Q. Was that shipment displayed?

A. No; it was not.

Q. What did they do with it?

A. Put it in the back in their oil room.

[fol. 615] Q. Since delivery of that order have you been successful in selling them any more oil?

A. I have not been successful.

Q. What are the trade practices of the Inland Oil Company as distributors of Macmillan Ring-Free oil as to the display of advertising of your products?

Mr. Hall: Pardon me. May I have the question read?

(Question read by the reporter.)

Mr. Hall: I think, if the court please, that enters an area that I was barred from on previous Government witnesses. I recall attempting to ask some of those witnesses as to the methods of disposing of their products and retailing, and was shut out by Government counsel's own objection.

Mr. Driscoll: Your Honor, this has only to do with the display of advertising.

The Court: Read the question.

(Question again read by the reporter.)

The Court: I do not think it is material. I think, as to some other witness, it was brought in indirectly, whether they did it in that manner or not, but the methods of business are not material. It is already in the record that some of the concerns other than the defendants allowed display of their own or other advertisements, and there is at least an indication that Standard did not. We are not concerned with methods, because the display or [fol. 616] non-display of advertising signs could not, by stretch of the imagination, result in a restriction on commerce.

Mr. Driscoll: Prohibition, your Honor, of an equal opportunity to display or advertise the products is certainly a limitation.

The Court: That may be true, but that cannot be proved by the fact that another company allowed it.

Mr. Driscoll: Well, your Honor, the question is aimed at this particular station, as to whether or not having oil, this competing oil, the Chevron station would permit it to be advertised. Now, an equality and opportunity to advertise wares is certainly as much a part as an opportunity to sell itself.

The Court: I did not take it that that question called for what he knew they were doing. If you want to call for conversation whether he asked——

Mr. Hall: I do not want to object to anything that was done——

The Court: I beg pardon?

Mr. Hall: I do not want to object to anything that was done, your Honor.

The Court: If you want to show that he asked to put some of his placards and signs up, and the man said he could not do so, I will allow it. But I did not so understand your question.

[fol. 617] Mr. Hall: I want to make my objection clear, that I am objecting simply to a question which calls for the policy of his company with respect to advertising.

The Court: Of his company?

Mr. Hall: Yes.

The Court: Yes; that is right. I so understood the question.

Mr. Driscoll: Very well, your Honor, I will withdraw the question.

The Court: Go ahead.

By Mr. Driscoll:

Q. At the time that you delivered this case of oil to this Chevron station did they accept your advertising signs and wares?

A. No.

Q. Did you speak to them with respect to their placing it underneath the counter in the back of the station as you have testified?

Mr. Hall: Now, just a minute. No conversation, please. That is objected to as calling for hearsay.

The Court: Yes. I will sustain that.

Mr. Driscoll: At this time, your Honor, the Government will move the admission of the exhibits identified as No. 31, a dealer TBA agreement between A. J. Knutson and Standard Oil Company, April 15, 1947; and Exhibit No. 30 for identification between Joe E. Morgan and the Standard Oil [fol. 618] Company; and assignment of a dealer TBA agreement.

Mr. Hall: Why don't you let the documents speak for themselves, Mr. Driscoll?

Mr. Driscoll: I wanted to identify the date of them, Mr. Counsel.

Mr. Hall: You do not have to do that.

Mr. Driscoll: Dated May 7, 1946.

Mr. Hall: Each of the documents in each of the exhibits is objected to as irrelevant and immaterial.

The Court: They may be received. Objection is overruled.

The Clerk: That is 30 and 31 admitted into evidence.

Mr. Driscoll: And likewise, the Government moves the admission of the document which has been marked for identification as Exhibit No. 29.

Mr. Hall: Each and all of the documents in that exhibit are objected to as irrelevant and immaterial.

The Court: The objection is overruled. They may be admitted.

The Clerk: 29 in evidence.

By Mr. Driscoll:

Q. The service station, Mr. Barmby, at Courtland, California that you testified to being operated by Mr. Morgan was the station formerly operated by Mr. Waterworth?

A. That is right.

[fol. 619] Q. And its address, please, if you know it.

A. Well, I would say it is a half a mile south of Courtland.

Mr. Driscoll: Very well. You may examine.

Cross-examination.

By Mr. Hall:

Q. How long have you been a salesman for lubricating oil products?

A. About three years.

Q. What was your business or occupation before that?

A. Well, I was in a refining business with the Brighton Oil Company.

Q. Brighton Oil Company?

A. Yes.

Q. Where was that located?

A. That was out on Folsom Boulevard.

Q. What were your duties in connection with that business?

A. That was picking up oil and selling——

Q. Picking up what?

A. I used to pick up the old crank case oil.

Q. Oh, this was one of these re-cleaning oil businesses?

A. Yes.

Q. You said Folsom Boulevard. Where is that located, [fol. 620] Sacramento?

A. That is out east of Sacramento.

Q. So you were in the re-cleaning oil business up until three years ago, is that correct?

A. Well, my father-in-law sold out and then I was not with the company any more.

Q. How many years were you in that business?

A. I was about three and one-half years.

Q. Since you have been a salesman for this Ring-Free oil, how many counties—let's see, now; that is three years you have been that kind of salesman, is it?

A. Yes; it is.

Q. Well, that would take it back to the years 1945, '46, and '47, is that right?

A. End of '45 up until the present time; that is right.

Q. Now, you were soliciting accounts within a certain area up here north towards Sacramento, weren't you?

A. That is right.

Q. How big an area was it during those three years?

A. Five counties.

Q. Five counties?

A. Yes, sir.

Q. How many accounts did you solicit during those three years in those five counties? I am not trying to hold [fol. 621] you down to any figure but just your best approximation.

Mr. Driscoll: Perhaps it would help, counsel, if you would ask him what types of account.

Mr. Hall: Thank you, sir. I will bear that in mind.

A. Oh, about 350.

Q. 350?

A. Yes, accounts.

Q. You would say that was a maximum number of accounts that you were soliciting during that three-year period in those counties?

A. I would say that is approximately the accounts that I have that I contact personally myself.

Q. Yes. Well, I am asking you for your best estimate of all the accounts.

A. That is right. Yes.

Q. That you solicited in those counties and have solicited during a period of three years, whether they are your regular customers or whether they are not.

A. I gave you the approximate customers, what I have at present myself.

Q. That is what I thought you were doing. Those are your regular customers?

A. Yes, sir.

Q. Now, how many over and above your regular customers have you solicited during those three years in those [fol. 622] counties, approximately?

A. Well, let's see. I will say probably about 900.

Q. 900. Are you including in the 900 the first figure you gave of your customers?

A. Yes.

Q. Now, you do not always keep a customer, do you?

A. Certainly not.

Q. The customer changes, doesn't he?

A. That is true.

Q. That has been frequently the case during the last three years?

A. Yes.

Q. There have been many cases during the last three

years where a customer would stop handling this Ring-Free oil that you have been selling?

A. Yes.

Mr. Hall: That is all, thank you.

Redirect examination.

By Mr. Driscoll:

Q. Mr. Barmby, for the information of counsel, what oil is it that you sell and dispense?

A. Macmillan Ring-Free motor oil.

Mr. Hall: Isn't that what I called it? Did I miscall that thing?

[fol. 623] Mr. Driscoll: Yes.

Q. Now, Mr. Barmby, these new customers that you have attempted to testify to, have you been able to add any Chevron stations to your account?

A. No.

Mr. Driscoll: That is all.

Mr. Hall: May I have the last question, please?

(Last question and answer read by the reporter.)

Recross-examination.

By Mr. Hall:

Q. Now, you said, Mr. Barmby, that you lost some accounts.

A. That is true.

Q. You recall that testimony. Those accounts that you lost did not all start to handle Chevron products at the time you lost them, did they?

A. That is true.

Q. What?

A. Yes; that is true.

Q. All of them?

The Witness: Would you state that again? I am sorry.

Mr. Driscoll: He said that was true.

The Witness: I said, "That is true."

By Mr. Hall:

[fol. 624] Q. In other words, the only accounts you ever lost were people that went into the handling of Chevron products?

A. Oh, no, no.

Q. Well, I did not think you meant that.

A. No.

[fol. 625] Q. As a matter of fact, you lost customers that handle products having nothing to do with Chevron, didn't you?

A. Yes.

Q. And who went into products having nothing to do with Chevron, isn't that right?

A. Yes.

Q. And who took products in place of your products, which were not Chevron products?

A. Yes.

Mr. Hall: That is all.

Redirect examination.

By Mr. Driscoll:

Q. But it is also true, I think you testified, Mr. Barmby, that each time a dealer changed to Chevron you lost him, and you have never added a Chevron account?

A. That's true.

Mr. Driscoll: That is all. You may be excused. And, your Honor, this witness, so far as the Government is concerned, may be released from the subpoena.

The Court: All right. We will take our usual adjournment at this time until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock p. m.)

[fol. 626] Los Angeles, California;
Thursday, May 6, 1948, 2:00 P. M.

Mr. Driscoll: The Government will call Mr. Floyd Hofto.

FLOYD HOFTO, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Floyd Hofto.

Direct examination.

By Mr. Driscoll:

Q. Where do you reside, Mr. Hofto?

A. Seattle, Washington.

Q. What is your occupation?

A. Sales manager for McDonald & Company.

Q. What is the business of McDonald & Company?

A. They are distributors for MacMillan oil, Western Washington.

Q. MacMillan Ring-free oil?

A. Yes.

Q. In what territory?

A. Western Washington.

Q. When were you first employed by the McDonald Company?

A. About a year ago, March, 1947.

Q. What was your position at that time?

[fol. 627] A. Salesman for MacMillan oil.

Q. Prior to that time had you had any experience in the sale of lubricating oils and greases?

A. Working with my dad only, who was in a similar business in Montana.

Q. Generally, what are your duties as sales manager of McDonald & Company?

A. Supervising sales in the area.

Q. Have you had any other employment with McDonald & Company?

A. I sold oil the first three months in his employment.

Then I went into selling his power saws, for which he is a national distributor.

Q. For how long were you in that?

A. I was put back in oil in December of last year.

Q. In your present capacity?

A. Yes.

Q. While you were employed as a salesman a year ago, 1947, what type or what class of trade did you call on to sell the products?

Mr. Hall: May I have the question read, please?

(Question read by the reporter.)

A. Service stations and garages.

By Mr. Driscoll:

Q. And in the course of your duties did you call on Chevron service stations?

[fol. 628] A. We called on all of them.

Q. Are you acquainted with the Gibbs service station at Issaquah, Washington?

A. Yes, I called on him about a year ago.

Q. You called on him for what purpose?

A. We wanted to sell him oil.

Q. Were you successful or unsuccessful in selling him?

A. Unsuccessful. I don't recall the exact reason, but we just couldn't sell him.

Mr. Hall: Wait a minute. No reasons; no conversation.

By Mr. Driscoll:

Q. That was about when, if you recall, or as nearly as you can recall?

A. About a year ago. I think it was in April.

Q. Have you called on him since?

A. No, it costs money to call on him.

Mr. Hall: Just a minute. I move to strike out the answer beginning with the words "costs money."

The Court: It may be stricken out; that portion of the answer may be stricken. The question may be repeated to him, to see if he can answer it. Read the question.

(Question read by the reporter.)

A. No.

By Mr. Driscoll:

Q. Are you acquainted with a service station that is operated by one Tangney, North Green Lake Way at 50th, Seattle?

[fol. 629] A. Yes.

Q. What type of station does he have?

A. That is a Chevron station.

Q. Have you called on him to sell your MacMillan oil?

A. Yes.

Q. Were you successful?

Mr. Hall: No proper foundation has been laid, and I object to it on that ground.

The Court: I think you ought to give us an idea of the time, approximately.

By Mr. Driscoll:

Q. Approximately when did you first call on Mr. Tangney?

A. That was also about a year ago.

Q. Were you successful or unsuccessful in selling him?

A. Unsuccessful.

Q. Are you familiar with a service station operator at Cornwall and Champion, in Bellingham, Washington, run by Floyd Fessler?

A. Yes.

Q. Did you call on him to sell your product?

A. I also called on him approximately a year ago, to sell oil.

Q. Were you successful in selling him?

A. Unsuccessful.

Mr. Driscoll: At this time, the Government would like [fol. 630] to have marked for identification the documents produced by the defendant under Paragraph I of the second subpoena, No. 15, 13 and 14 for identification.

The Clerk: Government's Exhibits 32, 33 and 34 for identification.

[fol. 631] Q. Are you familiar with a service station, the McDonald Service Station, located at 7235 Sand Point Way, Seattle?

A. Yes.

Q. What type of station is that?

A. That is a Chevron station.

Q. Have you ever called on it?

A. Well, about a year ago, also in April, I believe.

Q. Pardon?

A. I think I called on him about a year ago in April, also.

Q. Were you successful in selling your Macmillan oil to him?

A. No, sir.

Q. Are you familiar with the station operated by one Al Wilson, of a service station at First Avenue and Boston, Seattle, Washington?

A. Yes.

Q. What type of station is that?

A. That is a Chevron station.

Q. Have you ever called on him?

A. Yes; also about a year ago.

Q. Did you sell him any of your Ring-Free Macmillan oil?

A. No.

[fol. 632] Q. Have you ever been successful in selling him oil?

A. No. I haven't called back.

Q. Have you ever been successful in selling oil to any of these stations that you have testified to?

A. No.

Mr. Driscoll: The Government will ask to have marked for identification documents produced by the defendants, items 16 and 17, Paragraph I of the second subpoena.

The Clerk: Government's 35 and 36 marked for identification.

By Mr. Driscoll:

Q. Do you know a station operated by Pete Argenti at 26 Northeast and East 55th Street in Seattle?

Mr. Hall: Counsel, pardon me. What was the name?

Mr. Driscoll: Pete Argenti, A-r-g-e-n-t-i.

A. Yes, sir.

Q. What kind of a service station does Mr. Argenti operate?

A. That is a Chevron station.

Q. When you in your testimony here have said "Chevron service station" what products do those stations handle?

A. Well, the Standard products.

Q. The products sold and distributed by Standard Oil of California through their Chevron dealers?

A. That is right.

[fol. 633] Q. About when did you call on Mr. Argenti?

A. Well, that was also about a year ago.

Q. This was during the time in which you have testified you were a salesman out in the field?

A. That is right.

Q. Were you successful in selling Mr. Argenti?

A. No. He said he would pick it up if he ever wanted it.

Mr. Hall: Wait a minute. Just a minute. I move to strike the answer of the witness as to what Mr. Argenti said.

The Court: Yes; that may be stricken out, beginning with "he said he would pick it up if he ever wanted it."

By Mr. Driscoll:

Q. Are you acquainted with Terry Coogan in Seattle?

A. Yes.

Q. What does Mr. Coogan do?

A. Mr. Coogan has a garage and service station that is Chevron.

Q. He operates a Chevron service station?

A. Yes.

Q. Have you called on Mr. Coogan to sell him Macmillan Ring-Free oil?

A. Also about a year ago.

Q. Have you been successful in selling him?

A. No.

[fol. 634] Q. Have you ever been successful?

A. No.

Mr. Driscoll: The Government will ask to have marked for identification documents produced under Paragraph I of the second subpoena, items number 19 and number 20.

The Clerk: Government's Exhibits 37 and 38 marked for identification.

By Mr. Driscoll:

Q. Are you familiar with the Chevron service station located at 2232 Colby Street in Everett?

A. Yes.

Q. Operated by Hadley and Evans?

A. Yes.

Q. What type or what kind of service station do they operate?

A. That is a Chevron station and garage.

Q. Have you attempted to sell them your oil?

A. Yes; also about a year ago.

Q. And were you successful?

A. No. They had received calls for it.

Mr. Hall: Now, just one minute. The witness has answered the question. I ask the court to instruct this witness to refrain from comments as to occurrences at the station or as to conversations.

The Court: Probably he is not used to testifying in court. You can testify to what the results of your calls [fol. 635] were, but you cannot testify to what a man said. If you are asked whether you received an order or were successful in placing an order you can say, "yes." That is sufficient.

The Witness: Thank you. I will remember that.

The Court: All right.

[fol. 636] Q. Do you know a service station, Mr. Hofto, which is located at Renton, Washington, called the Louis Peretti Super Service Station?

A. Yes.

Q. What type of station is that?

A. That is a Chevron station.

Mr. Hall: What place was that, Bremerton?

Mr. Driscoll: Renton, R-e-n-t-o-n.

Q. Did you attempt to try to sell that service station your Ring-Free motor oil?

A. Yes.

Q. And with what results?

Mr. Hall: Now, just a minute. No foundation has been laid as to the time. Objected to on that ground.

By Mr. Driscoll:

Q. About when was your call on the Louis Peretti Super Service Station?

A. About a year ago.

Q. You attempted to sell him your oil?

A. Yes.

Q. With what result?

A. I did not sell him.

Q. Do you know a service station in Maple Valley, Seattle, operated by Mr. Ayres?

A. That is a Chevron station. It is out of Renton, not Seattle.

[fol. 637] Q. And about the same time as these other events you have testified to did you call on him and attempt to sell him?

A. That is right.

Q. Were you successful there?

A. No.

Mr. Driscoll: The Government will ask that documents produced by the defendants under Paragraph I, items 21, 22, and 23 be marked for identification.

The Clerk: Government's Exhibits 39, 40, and 41 marked for identification.

By Mr. Driscoll:

Q. Now, Mr. Hofto, did you call on service stations in Everett, Washington?

A. Yes.

Q. Did you ever call on service station operated by Trautman and Spurling in Everett?

A. On this side of Everett. Yes.

Q. And what kind of products do they sell?

A. That is a Chevron station and garage.

Q. Do they sell at that station the products of Standard Oil of California?

A. Yes.

Q. Did you solicit them for business for your oil?

A. That is right.

Q. Were you successful in selling them?

A. No.

[fol. 638] Q. Now, Mr. Hofto, during the period of time in which you were a salesman for the MacMillan, or for

McDonald, selling the MacMillan Ring-Free oil—I think your testimony was last spring—how long a time was that, a year ago?

A. It was about three months.

Q. And during the time since you have been sales manager—was that in December?

A. That is right.

Q. During any of that time have you or any of your salesmen been in the City of Seattle, calling upon Chevron stations in the City of Seattle, been able to sell them MacMillan Ring-Free oil?

Mr. Hall: Just a minute. That is objected to as calling for a conclusion of the witness.

Mr. Driscoll: If you know?

Mr. Hall: I have no objection to his asking if they did sell the oil, but his question is: Were they able to sell it?

The Court: I think, in common parlance, that it means the same. Overruled.

A. We have sold some; none of those that are listed.

Mr. Driscoll: Pardon me. I couldn't hear you.

The Witness: We have sold some.

Q. What were the facts of those sales?

[fol. 639] Mr. Hall: Now, just a minute. There has been no foundation laid for that. Objected to as calling for speculation and conjecture, incompetent, irrelevant and immaterial.

The Court: I did not quite get the answer to the previous question to this question.

(Record read by the reporter.)

The Court: Overruled.

[fol. 640] Mr. Driscoll: You may answer.

A. Well, we have sold a few of the Chevron stations; not a great deal.

Q. As to those that you have sold, did they display your oil?

A. Only in one case that I know of.

Q. In other cases they did not, do you know what they did with it?

A. So far as I know, it was just stored in a garage, just stored in the building, out of sight.

Q. Did you supply them with advertising media?

A. We naturally offered it when we gave them the oil.

Q. Did they use that?

A. Only in one case.

Q. The oil that you have testified to, the Ring-free oil, that you sold and distributed in Western Washington, what was the source of that, where does it come from? Where do you get it when you do order it?

A. It is shipped from ElDorado, Arkansas.

Q. How do you ship it?

A. We get it by boat.

Q. Do you order directly?

A. We place our orders directly with the MacMillan Petroleum Corporation, ElDorado.

Q. Where is that refinery located?

[fol. 641] A. In ElDorado, Arkansas.

Q. It is received by you by tanker?

A. Well, it is shipped in containers; not tanker necessarily; just a few.

Q. And then redistributed by you?

A. That's right.

Mr. Driscoll: The Government will have marked for identification the documents produced by the defendant under Paragraph 1, Item No. 24.

The Court: That is Government's Exhibit 42, marked for identification.

Mr. Driscoll: The Government moves the admission of exhibits marked for identification 32, 33, 35, 36, 37, 38, and 34, and I would like to call the Court's attention to Exhibit 34, being a distributor's agreement under date of August, 1938.

Mr. Hall: The defendants object to each and all of the documents included in each and all of the exhibits offered on the ground that they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: Exhibits 32 to 38, inclusive, admitted in evidence.

Mr. Driscoll: If the Court please, the Government moves the admission of the documents marked Exhibits Nos. 39 and 40.

[fol. 642] Mr. Hall: The defendants object to each and all of the documents included in each and all of the ex-

hibits for identification offered, on the ground that they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: 39 and 40 admitted in evidence.

Mr. Driscoll: You may cross examine, Mr. Hall.

Cross-examination.

By Mr. Hall:

Q. How many times did you call at this station operated by Gibbs, in Issaquah?

A. I called once.

Q. How many times did you call at the station operated by Bob Tangney?

A. I had to call there twice. Mr. Tangney was not there the first call. I called twice there.

Q. How many times did you call at the station operated by Fessler in Bellingham?

A. Once.

Q. How many times did you call at McDonald's service station, in Seattle?

A. Twice. He was not in the first time.

Q. How many times did you call at the Al Wilson station in Seattle?

A. Once.

[fol. 643] Q. How many times did you call at the Argenti's service station in Seattle?

A. Once.

Q. How many times did you call at Terrence Coogan's garage and service station?

A. Twice.

Q. How many times did you call at Hadley & Evans, in Everett?

A. Once.

Q. How long ago was that?

A. About a year ago.

Q. Do you know what lubricating oil they were handling?

A. Standard.

Q. Any other brand?

A. Not that I noticed.

Q. How many times did you call at Peretti's station at Renton, Washington?

A. Once.

Q. How many times did you call at the Maple Valley station in Seattle operated by Mr. Ayres?

A. Once.

Q. How many times did you call at Trautman & Spurling's, in Everett?

A. Just once.

Q. Did you notice what lubricating oil they were [fol. 644] handling?

A. No, I don't recall what it was.

Mr. Hall: That is all.

Redirect examination.

By Mr. Driscoll:

Q. Mr. Hofto, from what you have just testified on cross-examination, with the exception of Tangney and McDonald, it appears that you called on all of these service stations only once?

A. Yes.

Q. Will you explain to the Court why you did not call upon them more than one time?

Mr. Hall: Just a minute. I object to that upon the ground it is incompetent, irrelevant and outside of the issues of the pleadings, no proper foundation laid, and calling for speculation.

The Court: No, I think the question calls for a fact. You asked him how many times. He stated once. It might be that they will argue that that does not mean anything; that the man might not be interested in one call, and might not want anything at the time, and might want something later on. I can't tell what the reason was.

Mr. Hall: I was just clarifying the matters that have been opened up on direct, and we weren't at all clear from the record as to the number of times this man had called on [fol. 645] these various places. That was the purpose of the cross-examination.

The Court: I think it is material to say why he called only once. If it brings in something immaterial, I can strike it out, but otherwise the answer lends itself to speculation as to whether or not it was good salesmanship to try only one time. Salesmen are not supposed to try

only once. They are supposed to try several times before they give up ultimately.

Mr. Hall: If the witness gives his own opinion——

The Court: I would strike his answer. You might put it this way: What, if any fact,—so as to be sure we are asking for facts—what, if any fact caused you to limit your call to that one time? It is rather inexpertly framed, but I am trying to avoid the possibility of bringing in hearsay. My object in reframing it is merely to convey to the witness the idea of what we want.

By Mr. Driscoll:

Q. What are and were the facts which caused you to make only one call on these Chevron service stations?

Mr. Hall: Objected to as too general.

The Court: They are talking about the last one—no, I think the question was directed to all these stations. I will allow you to answer it.

The Witness: We can only call on so many accounts a [fol. 646] day, and, therefore, we weren't encouraged, and we could not go back there.

By Mr. Driscoll:

Q. How do you mean you weren't encouraged?

Mr. Hall: Just a minute——

The Court: That is a good dictionary word. That has a definite meaning. I will sustain the objection.

Mr. Driscoll: That is all.

Mr. Hall: That is all.

The Court: Call your next witness.

Mr. Driscoll: If your Honor please, and counsel, if there is no objection may Mr. Hofto be excused? He is from Seattle.

The Court: Yes, I will excuse all these gentlemen.

Mr. Driscoll: Do you want him any more?

Mr. Hall: No.

GEORGE W. F. JOHNSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Clerk: What is your name, please?
The Witness: George W. F. Johnson.

Direct examination.

By Mr. Somerville:

Q. Where do you reside, Mr. Johnson?
A. Las Vegas, Nevada.
[fol. 647] Q. What is your employment or occupation?
A. I am general manager of the McQuay Supply Company.
Q. What is the nature of the business of the McQuay Supply Company?
A. We are distributors for Quaker State oil in the area surrounding Las Vegas, together with other side lines.
Q. From what source do you obtain that Quaker State oil?
A. We order it from Los Angeles, but it isn't always shipped out of Los Angeles.
Q. Is ordering and sales part of your duties as manager?
A. I think so.
Q. Are you familiar with the source from which Quaker State oils and greases are shipped?
A. I believe so.
Q. From what source are they shipped?
A. We get some of it from Los Angeles, and the bulk of it comes from Oil City, Pennsylvania.
Q. Do your duties include sales contact with the service stations and garage trade?
A. Yes.
Q. Have you made any calls on Chevron service stations?
A. Yes.
[fol. 648] Q. Calling your attention to the service station located at Henderson, Nevada, operated by Russell Stephens, have you called on his station?
A. Yes, sir.
Q. Have you made sales of Quaker State oil?
A. Yes, sir.
Q. When did those sales commence?
A. In the early part of 1946.

Q. Did sales continue after that?

A. Approximately three or four months.

Q. When was the last time that you were able to sell oil to this station, if you did sell oil to the station?

A. I am not prepared to answer exactly.

Q. Approximately?

A. The middle of 1946.

Q. And thereafter did you attempt to make further sales?

A. I did not.

Q. Did you instruct other employees of your company to make contacts with this station?

A. I did.

Q. Were sales made?

A. No.

Mr. Somerville: At this time the Government would like to have marked for identification the document relating to [fol. 649] the service station at Henderson, Nevada, produced under Paragraph I, Item No. 28 of Subpoena No. 2.

The Clerk: Government's Exhibit 43.

By Mr. Somerville:

Q. I call your attention now to the service station located at 1238 South Fifth Street, Las Vegas, operated by Floyd Johnson. Have you attempted to sell, or made sales of Quaker State oil at that station?

A. Yes, sir.

Q. When did those sales commence?

A. In October there was a sale made from our establishment to that place.

Q. October of what year?

A. 1946.

Q. Were additional sales made?

A. No, sir.

Q. Were additional attempts to sell made?

A. Yes, sir.

Q. And did you have any containers for storage of Quaker State oil at this service station?

A. I am not prepared to answer that question.

Q. Very well.

Mr. Somerville: At this time the Government would like to mark for identification the documents produced in response to Subpoena No. 2, Paragraph 1, Item 29.

The Clerk: Government's Exhibit 44, marked for [fol. 650] identification.

Mr. Somerville: The Government offers in evidence Exhibit 43 for identification.

Mr. Hall: The document, and each and all of its part, and each and all of the documents included in the offer are objected to as irrelevant and immaterial.

The Court: Overruled.

The Clerk: 43 in evidence.

[fol. 651] Mr. Somerville: That is all.

By Mr. Hall:

Q. Where do you live, Mr. Johnson?

A. Las Vegas, Nevada.

Mr. Somerville: That is all. You may step down.

The Court: Gentlemen, before you call the next witness we will take a short recess. However, I feel I ought to make an announcement at the present time for the benefit of the witnesses and also for the gentlemen of the press, some of whom are specially covering this trial, as concerning the discussions that counsel have had with the court today about the case.

We are very sorry, gentlemen, to hear that Mr. Dixon has lost his father, which necessitates his absence for a few days from the city as he must fly east.

We extend to Mr. Dixon and his family our sympathy. While his father was of quite an advanced age, I know that all of us who have lost parents know the hurt that such a loss occasions no matter at what age it comes.

We have discussed this matter and tried to arrive at some arrangement that would not delay the case any longer than absolutely necessary. As stated at the beginning, the remainder of this month has been assigned to this case other than some law and motion matters which regularly come upon Monday. No other trial is scheduled. However, any loss of any large number of days during the [fol. 652] month will dislocate the calendar for next month because other cases are set, and one of them was specially set for early next month which involves a South American corporation which has been preparing for that trial for some months and which will have witnesses from such country here at the trial.

So, after consulting in the matter, it has been determined that rather than have Mr. Dixon's assistants continue in his absence, which would put him at a disadvantage because upon his return he would have to familiarize himself with what went on, and at times I know from experience it is not satisfactory for the chief counsel in any case to absent himself and then have to later on argue certain phases of the case from a cold record when he was not present in court. It has been decided that when we adjourn today the case will be continued until next Wednesday, which will give Mr. Dixon an opportunity to fly east and return.

We shall try to make up for the loss of time, and counsel have been cooperative in the matter. I may say that sitting in this type of case—I have had rather extended experience in the trial of cases of this type both in this District and elsewhere—counsel for the Government have proceeded very rapidly and counsel for the defendants have not in any way by undue cross-examinations retarded the progress of the case. In fact, I think they deserve a compliment for limiting the cross-examinations strictly to [fol. 653] what is necessary.

I think that was about all I wished to state for the record at the present time, unless counsel desire to add anything to what I have said.

Mr. Hall: May the record show, your Honor, that defense counsel join with your Honor in expressing our sympathy to Mr. Dixon?

The Court: All right. We will take a short recess and then we will continue.

(Short recess.)

[fol. 654] Mr. Somerville: The Government will call Mr. Beman as our next witness.

JOHN B. BEMAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Clerk: What is your name, please?
The Witness: John B. Beman.

Direct examination.

By Mr. Somerville:

Q. What is your residence address, Mr. Beman?
A. 131 South Citrus, Los Angeles.
Q. What is your occupation or business, sir?
A. I am president and general manager of the Pennzoil Company.

The Court: You are also an attorney at law?
The Witness: Yes, I am also an attorney at law, but partly reformed.

By Mr. Somerville:

Q. What is the business of the Pennzoil Company, Mr. Beman?
A. The business of the Pennzoil Company is the marketing,—the purchasing and marketing of lubricating oils and the manufacturing and marketing of so-called lubricants, or commonly known as greases.
Q. Do your duties include supervision over the ordering of oils and greases and sales and distribution of those [fol. 655] oils and greases?
A. They do, except we do not order greases. We manufacture greases.
Q. From what source do you order your oil?
A. Our oils are ordered mainly from Oil City, Pennsylvania.
Q. From what company?
A. The Pennzoil Company, which happens to be a Pennsylvania corporation bearing identically the same name as the California corporation of which I am the president.
Q. What is the relationship between the Pennsylvania corporation and your company?
A. The Pennsylvania corporation owns a portion of the stock of the Pennzoil Company, a California corporation.
Q. Your corporation, then, is the distributing medium

for Pennzoil products manufactured by the Pennsylvania company?

A. It is.

Q. What is the area that you distribute and market Pennzoil oils produced in Pennsylvania?

A. In the so-called eleven Western States, and a very small portion of the State of Texas.

Q. Do the eleven Western States include California, Oregon, Washington, Idaho, Utah and Nevada?

A. They do.

[fol. 656] Q. Please inform the Court, Mr. Beman, of the method and manner in which the Pennzoil Company of California distributes and markets their products from the refineries, and sources that you have indicated?

A. May I simplify that by talking first about Pennzoil?

Q. Yes.

A. The Pennzoil Company purchases oil from Oil City on orders placed from here by letter or wire for Pennzoil, which is delivered to our plant at Vernon, and to Emeryville, just outside of Oakland, California, Portland, or Seattle, for use and distribution in the three coastal States.

In the three Coastal States we do business primarily through divisions and branches as distinguished from distributors. In the eight remaining States and a small portion of Texas, we do business through distributors. We do business through a distributor in Western Washington, and in the counties in California known as El Centro and San Diego. In one or two outlying points we do business through distributors, even in these three States where mainly we do business directly through branches and divisions.

Q. From what source are shipments made with respect to your distributors, speaking now of lubricating oils?

A. The oil known as Pennzoil, which is marketed by our distributors, of whom there are about nine in the eight [fol. 657] States, other than the three coastal States, is ordered by these distributors by orders placed with us. We in turn then place an order with the Pennzoil Company at Oil City, Pennsylvania, ordering and directing shipment of the particular quantity of oil directly to the distributor who shall have placed the order, and then we pay for the oil as the purchaser from the Pennzoil Company at Oil City, within ten days of the receipt of invoice indi-

cating the shipment has been made. And we thereupon invoice the material, the oil, to the distributor, and bill him for it, and these particular shipments are made to him mainly by car, either tank car, or if it is packaged oil, in box cars. Occasionally, in the case of emergency oil is shipped from our Vernon plant, or our Emeryville plant, or our Portland plant, to someone of these distributors who are in what we might refer to as the mountain territory.

Q. Would oil from those sources possibly cross State lines?

A. It necessarily does.

Q. With respect to the movement or flow of lubricating oils, is it frequent, constant, or what is the nature of it, Mr. Beman?

A. Well, for example, eight or nine cars are shipped out of Oil City each and every month, to some of our distributors in the mountain territory. One or two shipments are received at our Vernon plant, by shipment, first [fol. 658] from Oil City to Baltimore, where it is loaded in tanks of ships, and brought through the Panama Canal to Wilmington, and from there by tanker to our plant at Vernon. That ship may go on with a portion of its load to San Francisco, or to Oakland, where it is put in tank cars, and goes to the Emeryville plant, and some of it may go to Portland, and occasionally to Seattle.

Q. Are shipments made pursuant to orders received from your distributors?

A. These particular boat shipments would not be ordered by distributors, because those boat shipments constitute a supply for our three so-called coastal states, and our branches, but the distributor business is mainly, as I have indicated, in tank car shipments made directly to us out of Oil City.

[fol. 659] Q. With respect to greases, would you tell us from what sources those greases originate, and to what points they are shipped by the company?

A. Greases are made up very largely of oil, and the greases contain other substances, stearic acid, and materials that I would not attempt to learn, even much less recite; but the oils which are component parts of those greases are sometimes Pennsylvania oil, which we take out of our bulk storage, or they may be western oil, California oil,

These greases are processed, and, as we would say, manufactured in our grease plant here at Vernon. The grease that is manufactured there is shipped in cars to our other Branch Division points, and to all of our distributors.

In other words, all of the grease, or so-called lubricants that we market, is manufactured here at our Vernon plant for the entire jurisdiction, the eleven western states, and our foreign distribution, too.

Q. With respect to the sales policy of your company, do you market directly to the service station and garage trade in the three coastal states you have mentioned?

A. Yes.

Q. And have you salesmen that contact this trade?

A. We do.

[fol. 660] Q. How many salesmen do you have?

Mr. Hall: Do you mean in the seven western states, Mr. Somerville?

Mr. Somerville: No, I was thinking with reference to the three coastal states.

A. May I say we have no salesmen except in the three coastal states, with the exception of one so-called distributor-representative, who might be classed as salesman, and he calls on the distributors of the so-called mountain territory.

Q. With respect to your distributors, does the Pennzoil Company do a certain supervisory work or joint-promotional work for these distributors?

A. Yes, to a substantial extent.

Q. And that would include advertising and sales promotion, would it?

A. That's right.

Q. Are you familiar, Mr. Beman, with the grades, brands, qualities of oil bought by and sold generally to the motoring public, including those produced and refined by the Standard Oil Company of California?

A. Generally speaking, yes.

Q. Would you say that those oils and greases manufactured by Standard Oil Company are comparable to Pennzoil oils and greases?

[fol. 661] A. I have heard that word "comparable" used. Frankly, I don't know what it means with relation to this case. If you mean competitive in that sense——

The Court: I think he means in the same class, so far as the market is concerned.

A. Well, there are several markets, your Honor.

The Court: The market in which you operate.

A. The market isn't only a matter of location. It is a matter of individual choice, too.

By Mr. Somerville:

Q. Let us talk about the service station and garage market.

A. There are some smart service station and garage people too, and I am not attempting to be facetious, and that's why I say, if you mean what oil is in competition, why yes, I know several of them.

[fol. 662] Q. And they serve a like utility as far as use is concerned?

A. Well, I am not expert enough to say no, but I don't think they do as far as utility is concerned.

Q. Does your company instruct its salesmen to contact Chevron service stations and the service trade generally?

A. We do.

Q. Going back to the matter of comparability, Mr. Beman, your Pennzoil products are competitive with various grades and brands of Standard Oil oils?

A. That is right.

Mr. Somerville: I think that will be all.

The Court: All right.

Cross-examination.

By Mr. Hall:

Q. This corporation of which you are president is a California corporation?

A. Organized under the laws of the State of California: yes.

Mr. Somerville: Mr. Hall, will you excuse me. Did the witness finish his answer to next to the last question I asked him, the one preceding that last question?

The Witness: What was the question?

(Record read by the reporter.)

[fol. 663] Mr. Somerville: That is all.

The Court: All right.

Q. By Mr. Hall: Are you an officer of the Pennsylvania Corporation of the same name?

A. The one, the Pennsylvania company, I am not.

Q. Does the Pennsylvania company have an office in California?

A. It does not.

Q. In the States of California, Oregon, Washington, Nevada, Arizona, Utah, and Idaho, which I will for convenience call the seven western states, what were the number of retail outlets handling Pennzoil during the year 1946, approximately?

A. I can only give it approximately. I would say between not less than eight and probably not more than twelve thousand accounts.

Q. And what was the approximate number of retail outlets handling Pennzoil in those seven western states during the year 1947?

A. My mind wandered to that past answer because——

Q. What, your mind wandered?

A. My mind wandered to the answer to the last question because I was wondering whether that number "12,000" would cover it if we include all of the distributor accounts, but I think it was right. I think my answer was right, not less than eight and probably not more than twelve thousand accounts.

[fol. 664] Mr. Hall: Will you read now my last question, Mr. Reporter?

(Last previous question read by the reporter.)

A. Approximately that number, 8,000 to 12,000.

Q. When was it, Mr. Boman, that you backslid from the legal profession into the oil business?

A. Well, I started the day I was admitted to practice in 1912. In 1916 I became an attorney for the Pennzoil Company and that was the first backslip I made.

Mr. Somerville: I object to that kind of question, your Honor, on the ground it is outside the scope of the pleadings.

The Witness: It calls for a conclusion, too, if I may object, myself.

Q. By Mr. Hall: You have been familiar, then, with the affairs of Pennzoil Company since about 1916?

A. That is right.

Q. How many retail outlets handled Pennzoil in the seven western states during the year 1916, approximately?

Mr. Somerville: I object to this line of questioning as being irrelevant and immaterial.

A. Well, the answer——

The Court: Just a minute.

Mr. Hall: Wait a minute, Mr. Beman. Your counsel is objecting.

[fol. 665] The Court: What was the question?

(Question read by the reporter.)

The Court: Overruled. I am being consistent. I have allowed that to be asked, but the method of procedure I am not allowing. As I pointed out, comparison may be useful in determining what amount of restraint there may be, if any. All right.

A. I would say there were probably less than 2,000 at that time. The company was only a little over two years old.

Q. By Mr. Hall: *Is* Pennzoil lubricating oils sold as packaged goods or are they sold in bulk?

A. Both in packages and in bulk.

Q. You mentioned some plant near here from which your lubricating oil coming from the east was distributed. I think maybe it was in Vernon, is that correct?

A. Oil is distributed from Vernon. The Pennzoil, if we are talking about that, is distributed from Vernon to our San Diego and El Centro distributor, to our branch at Colton, to our branch at Santa Barbara, and to our branch at Bakersfield.

Q. What do you have down at Vernon in the way of a plant? Is it a warehouse or is it a processing plant?

A. We have a warehouse with a blending room and a grease manufacturing room.

[fol. 666] Q. Is this Pennzoil lubricating oil that comes into Vernon blended at Vernon?

A. Yes, it is.

Q. Do you have any other plants in California similar at all to the Vernon plant?

A. At Emeryville, a suburb of Oakland, we have a plant at which blending and packaging—and I refer to canning—are part of the operation. No greases are manufactured there.

Q. Do you do any canning down at Vernon?

A. We do.

Q. Then, if I get the picture, Mr. Beman, it is this: That your blending stocks come in from the east and they go either to Vernon or Emeryville?

A. Come in from the east.

Q. Well, wherever they come from.

A. Well, you said "they come in to the east."

Q. Come from the east.

A. That is right.

Q. They come from the east to Emeryville and Vernon?

A. That is right.

Q. And at both those places they are blended?

A. That is right.

Q. And then they are distributed from those two centers to various branches, is that correct?

[fol. 667] A. That is right.

Q. Is it true that the Pennzoil lubricating oil that eventually finds its way into retail outlets in California would come originally from either the Emeryville plant or the Vernon plant?

A. Well, probably yes. Not originally but——

Q. Well, I mean it would come from either one of those, one or the other of those plants?

A. That is right. No other intermediary in California.

Q. Yes.

A. That is right.

Q. I think you said a moment ago that Pennzoil lubricating oil is furnished both in bulk and as a packaged goods, is that right?

A. That is right.

Q. Which do you retail the most of in the seven western states, the stuff that comes in the bulk or the stuff that comes in the packages?

A. Offhand, I would say about 50 per cent in the—now, I have to think in terms of 11 western states, Mr. Hall, but I assure you that the other four would be typical of the seven to which you refer. And I would say that in the 11 western states probably 50-50 would be the best ratio, the nearest ratio that I can guess.

Q. Does your company as a matter of policy try to push [fol. 668] one rather than the other? I am speaking now of packaged goods, on the one hand, and bulk stock, on the other.

A. No. I think we leave that pretty largely as a matter of choice to the dealer.

Q. How many grades of Pennzoil will a retail outlet ordinarily carry?

A. Well, the smaller ones, maybe two grades, if you are referring, Mr. Hall, to the SAE number, that is SAE 10, 20 or 30. Is that what you mean by grade?

Q. I am speaking as a lawyer who has not yet backslid into the oil business, Mr. Beman, and when I speak of the grade I think of what the ordinary ~~layman thinks~~ of as maybe, light, medium, and heavy. Do you have those?

[fol. 669] A. Yes, but we call them 10, 20, and 40 or 20, 30 and 40, depending on where we want to start to be light and where we want to end to be heavy.

Q. Yes. Are there any other subdivisions of your product besides what you have just referred to of light, medium and heavy?

A. In the Pennzoil there are none.

Q. You only have three grades, then?

A. No; I didn't say that.

Q. Well, how many grades do you have?

A. Well, from 10 to 90, so far as I have ever heard. I don't remember ever hearing of any more than that.

Q. How many separate grades would there be?

A. 10, 20, 30, 40, 50, 60, 70, 80, and 90.

Q. Nine grades?

A. If you have counted right. I didn't count.

Q. I counted them up as you were going along. I think that is nine.

A. All right.

Q. And now, if they were handled as bulk stock, each would take a separate tank, would they not?

A. Certainly.

Q. You could not mix them in the same tank and still preserve the identity of the grade, could you?

A. You could not.

Q. Do you furnish the tanks to the retail outfits?

[fol. 670] A. We have furnished some; yes.

Q. I mean furnish free of charge?

Mr. Somerville: I object to this question as incompetent and immaterial.

A. In some cases——

Mr. Somerville: It is irrelevant and immaterial, and I object to it.

The Court: It is a general question. I do not want the witness to go into any great detail into the method of operation. All right; you may answer the question.

A. In some cases we have supplied the dealer with the highboys or what we call sealed containers as the dispensing unit for oils that they purchased from us.

By Mr. Hall:

Q. Without cost to the dealer?

A. Yes; we have done it without cost to dealers.

Q. Generally speaking, during the year 1946 did you sell all Penzoil lubricating oil you could get your hands on?

A. In 1946?

Q. Yes.

A. No.

Q. You did not?

A. No.

Q. What did you do with that that you did not sell?

A. We were smart enough not to buy it.

Q. You mean you did not buy it from your eastern parent, [fol. 671] is that it?

A. We did not buy it from anybody, because there would be nobody else to buy it from but the eastern parent.

Q. Did your eastern parent in that year have a pretty good surplus of it that it was not selling?

A. Not as——

Mr. Somerville: I object to that question.

The Court: I will sustain the objection.

Mr. Somerville: It is not within the scope of the direct examination.

By Mr. Hall:

Q. Has there been a change in your system in the three coastal Pacific Coast states with respect to your salesmen-distributor situation during the last five or six years?

A. Yes. In the County of San Diego——

Q. Well, I am speaking now generally.

A. No, generally, none.

Q. Have you changed from a salesman to a distributor or a distributor to a salesman during that period?

A. If I understand your question, the answer is no.

Q. Yes. Now, how about the other states of the seven western states we have mentioned?

A. Let us know what you want to know about them. May I ask the reporter?

Q. I think you are right, Mr. Beman. Let me reframe [fol. 672] the question. In the States of Arizona, Nevada, Utah, and Idaho has there been a change during the last five or six years from salesmen to distributors?

A. No; because, as I have said before, we have never had a salesman so far as I know outside the three coastal states, except the one so-called distributor-representative who is out there and, we hope, selling.

Q. That makes it clear. Then that has been your system in the seven western states?

A. That is right.

Q. The system you have described of distribution in the seven western states has been the system pursued by your company during the last six or seven years?

A. That is right.

Q. Your company has an advertising budget for the advertisement of these lubricating oils and greases of Pennzoil, has it?

A. Yes.

Q. What was the advertising budget during 1947?

A. I think it was $210,000.

Q. Was that more or less than the year 1946?

A. May I correct '47?

Q. Yes, sir.

A. I think '47 was about $190,000, and I am quite certain that '46 was around $190,000.

[fol. 673] Q. What was your advertising budget before the war, say for the year 1940?

Mr. Sommerville: I object to this line of questioning.

The Court: This is the last question I will allow. There were no objections before. I will allow it to be answered.

The Witness: In 1940, something over two hundred—and I think about 210—and I believe that is where the figure 210—came into my mind. From 1941, that was the budget.

and I went in in 1941 and cut the expenditures down to about $190,000.

By Mr. Hall:

Q. How many salesmen do you have now in the area where you use salesmen, and I think you said that was the three Pacific Coast states.

A. 38 to 41 or 42, and then that would probably include one or two division managers—in fact, about four division managers.

Q. That is what you have at the present time?

A. I will correct that. I think it would be more nearly 43 or 44 all told.

Q. How many did you have in the year 1946?

Mr. Somerville: I object—

The Court: Overruled.

The Witness: I would say almost identically the same number.

[fol. 674] By Mr. Hall:

Q. Would it be the same for 1947?

A. It would be the same, so far as my memory of the number of salesmen goes which would be back probably to 1939.

Q. How many salesmen did you have in the three Pacific Coast states in the period before the war, say in 1940?

A. Well, as nearly as I can guess, or remember, it would be around 37 salesmen in 1940, and supervisors and managers, also referred to as salesmen, which would bring the number up to some 43 or 44.

Mr. Hall: That is all.

The Court: Any redirect examination?

[fol. 675] Redirect examination.

By Mr. Somerville:

Q. Mr. Beman, during the past several years have you gained or lost in the number of Chevron accounts?

A. I thought you were going to say in weight. Have we gained or lost in our Chevron accounts?

Q. Yes.

A. I have absolutely no way of knowing. In our Chevron accounts, did you say?

Q. Yes.

A. Did I say we had any Chevron accounts?

Q. That answers the question.

A. Just because we are entitled to them does not mean we have them.

Q. With respect to Pennzoil blended at Vernon, is Vernon the only plant where blending is done in the western area?

A. No, we blend at Portland and at Emeryville.

Q. With respect to the Pennzoil blended at Emeryville and at Vernon, does a great portion find its way across state lines?

A. Speaking of Vernon, I would say not a very great portion of Pennzoil crosses the state line, except the California line into Mexico, and I take it you are not interested in that.

[fol. 676] Q. No. Let us put it this way, Mr. Beman——

A. I want to finish the answer, because I said not in any very great quantity. Occasionally we will ship out of Vernon all that is blended at Vernon, to Salt Lake, which I think is in Utah, or Phoenix, Arizona, and sometimes as far as El Paso, Texas, but those shipments are generally made because of an emergency, a sudden order of some kind.

Q. You testified, Mr. Beman, that blending plants are at Emeryville and Vernon, California and Portland, Oregon?

A. That's right.

Q. With respect to all of the other western states involved, do all shipments of oil come in the blended state?

Mr. Hall: I would like to have the question read.

(Question read by the reporter.)

By Mr. Somerville:

Q. ——into these other states?

Mr. Hall: The question is unintelligible.

The Court: The witness is having difficulty understanding the question.

Mr. Somerville: Let me reframe the question. Mr. Beman, what states are supplied from Emeryville blending plant?

A. From Emeryville we supply Nevada and a part of Oregon and in emergencies we might send it to Boise.

Idaho, or some place like that. But mainly it would be only Nevada and the southern part of Oregon that would be [fol. 677] supplied out of Emeryville.

Q. What states are supplied from the blending plant at Oregon?

A. Mainly Oregon, and to a very substantial extent the State of Washington and to some extent Idaho.

Q. With respect to all of these states shipments are also coming from Oil City, Pennsylvania, are they not?

A. That's right.

Q. So that the flow of Pennzoil is coming both from Pennsylvania and from these blending plants across state lines into other states?

A. That's right.

Q. Your company is seeking to increase its business, rather than restrict it, isn't it, Mr. Beman?

A. It certainly is.

Q. And orders are taken pursuant to demand for Pennzoil products?

Mr. Hall: I object to that as irrelevant and immaterial.

The Court: It is leading. I will sustain the objection.

Mr. Somerville: That is all.

[fol. 678] Recross-examination.

By Mr. Hall:

Q. With respect to Pennzoil that is sold at dealer outlets in California, is it true that that comes through either the Emeryville plant or the Vernon plant?

A. I think I have answered it. The Pennzoil we sell to dealer outlets in California comes in tank cars by rail, or in boats by water to Vernon or Emeryville. It comes in its two component parts, neutral oil, which is the lighter portion, and bright stock, which is the heavier portion, and those two are mixed, as you laymen would put it, and I still do, or blended into a product known as Pennzoil; and it isn't Pennzoil until it is blended.

Up to the time it is blended it is nearly 100 per cent pure Pennsylvania neutral or 100 per cent Pennsylvania bright stock.

Q. That is true with respect to all of the Pennzoil lubricating oil handled by retail outlets in California?

A. I can't think of any exception. There may be. In

1944 I think some Pennzoil was canned at Oil City, Pennsylvania, at the refinery there, and shipped out in cans.

Q. But that was not your usual method or practice?

A. No, that was because cans happened to be more available at that time, and it would certainly be an emergency [fol. 679] or an exceptional case. And I must qualify that in saying I am not even certain any of that came as far west as California. I know a lot of it was distributed in the mountain territory.

The Court: Anything further?

Mr. Somerville: Yes.

By Mr. Somerville:

Q. Mr. Beman, are Pennzoil lubricating oils shipped into the western area from Pennsylvania?

A. Into the western area, meaning the eight——

Q. Including the eight states.

A. They are shipped into the 11 western states, but those 11 western states include the eight states into which it is shipped.

Q. In respect to blended products, Mr. Beman, the oil is brought in from Pennsylvania is it not, pursuant to and in satisfaction of a desire on the part of your trade for blended products, for blended lubricating oils?

Mr. Hall: I object to that as irrelevant and immaterial.

The Court: It is a conclusion. It is a leading question; besides, it is not cross-examination, and from the witness' statement the answer is apparent, that it is blended to satisfy the needs. They are not in business for their health. They are in the business to make a profit. To do so they have to satisfy the demands of customers.

By Mr. Somerville:

Q. The products are blended because of and pursuant [fol. 680] to the demand of the trade for blended products?

A. That is correct, to meet the SAE grades, light, medium and heavy, so to speak, and means a mixing in the lighter grades of a larger portion of the neutral as compared with the bright stock, and that varies with the SAE grade. [fol. 681] Obviously, to carry several hundred thousand gallons of each one of these grades would require four or five times the storage space that it does to take those two.

simple, sole component parts and mix them into the quantity that you need, when you need that particular quantity, and that particular grade. The oil is there just the same.

Mr. Somerville: That is all.

Mr. Hall: That is all.

The Court: As you know, the Court will adjourn until tomorrow morning, but the case will be continued for further trial to Wednesday, May 12th. All witnesses under subpoena will return at that time, without further notice, unless they are excused by counsel who subpoenaed them.

Mr. Driscoll: If your Honor please, before you do adjourn, there were two or three exhibits that have been marked for identification, and examined by counsel, which the Government would like to offer in evidence, so the record may be clear up to now on the exhibits. They are Exhibits 41, 42 and 44.

The Court: What are they?

Mr. Driscoll: Dealer agreements, subleases——

The Court: Of the same type as those already introduced?

Mr. Driscoll. Yes, your Honor.

Mr. Hall: The defendants object to each and all of the documents offered, under each and all of the numbers re-
[fols. 682-683] ferred to, on the ground that they are irrelevant and immaterial.

The Court: The objection will be overruled, and the exhibits identified as Exhibits 41, 42 and 44 will be received as exhibits, to bear the same number. And let the record show these proceedings occurred after my observation about the time of adjournment. The Court will adjourn, and the case will be continued as already stated.

(Whereupon, an adjournment was taken until Wednesday, May 12, 1948, at 10:00 o'clock a. m.)

[fols. 684-685] IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable, LEON R. YANKWICH, Judge Presiding

No. 6159-Y-Civil

UNITED STATES OF AMERICA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC., Defendants

REPORTERS' TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Wednesday, May 12, 1948

APPEARANCES:

(As heretofore noted.)

[fol. 686] Los Angeles, California, Wednesday, May 12, 1948, 10:00 A. M.

Mr. Dixon: May it please the court, before proceeding, it is my understanding that it is not the intention of your Honor to hold court on Friday.

The Court: That is correct. However, we will hold court on Monday to make up for it.

Mr. Dixon: Yes.

The Court: I do not know absolutely the hour. I will determine that tomorrow. I have not looked at Monday's calendar. We had a very long law and motion calendar last Monday. They kind of zigzag and I hope the next one is a zag; that it is not very long. At any rate I will let you know tomorrow at what time. I thought, if I have anything in the morning, we might convene a session at 1:00 o'clock and that will give us a long afternoon. But I will tell more definitely tomorrow.

Mr. Dixon: That will be fine, your Honor. The Government has several out of town witnesses that we hope to finish with before court adjourns tomorrow, because they were subpoenaed prior to the knowledge that your Honor has just given us concerning the intention not to hold court on Friday.

The Court: That is all right. Then we will just hold them over, that is all.

[fol. 687] Mr. Dixon: Thank you, your Honor.

The Court: I may say off the record, gentlemen,

(Brief comment off the record.)

Gentlemen, I presume you all saw the group of cases that were decided on May 3rd. There was another one decided last Monday but I have not received it.

I would call your special attention to one of them. I have the slip decision, which, of course, we receive. I presume Mr. Dixon received that one. We get slip decisions immediately. I mean a few days after, although I understand there is one of the law services photostats them and sends them to those who are others than the officials who get them.

The case I refer to is *Federal Trade Commission, Petitioner v. Morton Salt Company.*

The Clerk: Mr. Dixon just handed me one.

The Court: Yes; these are the same. You have three. You do not have the fourth one. The one that interests us, the fourth one, is *Federal Trade Commission v. Morton Salt*, and the reason I call your attention to it is because it discusses not only the prior Salt case but it also discusses some of the cases which have been the subject of argument in your briefs or memoranda, namely, the Pattern case. I refer to the pattern case, the *Standard Fashion Co. v. Magrane-Houston Co.*, and comment on it.

It is also interesting for this reason, which does not [fol. 688] appear in the opinion itself but appears in the partial dissent of Justices Jackson and Frankfurter—I have always said that dissents, at times, give an insight into the majority opinion—and that is, that Justice Jackson and Justice Frankfurter seem to feel that the court here has adopted, in passing on the rulings of the Federal Trade Commission in holding certain practices to be discriminatory under the Clayton Act, the criterion of "possibility". In other words, that if the contract has the tendency to have the result, that it is within the inhibitions of the Act and warrants the type of order which was made in this case.

The minority opinion, the partial dissent, feels that that is a departure from the Standard Fashion case and others which, as they read them, call for reasonable certainty; in

other words, probabilities that the consequences would flow.

So both of them turn upon the interpretation of the word "may" in Section 2 of the Clayton Act, namely, that they may have that result.

I thought I would call that to your attention for whatever it might be worth and it might gloss, to give an old fashioned word, in this particular case.

I have not seen the other except what is reported in the newspapers and, of course, it is so truncated that you cannot form an idea, but we will probably have it by next [fol. 689] Monday. We usually get them on Saturday. The other three have no particular bearing, as I read them, because they relate merely to the type of control of theatre chains which might be a violation of the Act, both in an action brought directly by the Government and others in actions brought by individuals to recover damages which they might have suffered by reason of the practices which are condemned by the Act.

All right. Now we will proceed.

[fol. 690] Mr. Somerville: The Government calls as its next witness Harry Ellis.

HARRY R. ELLIS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Harry R. Ellis.

Direct examination.

By Mr. Somerville:

Q. What is your residence address?

A. 1816 South Stoneman Avenue, Alhambra.

Q. What is your occupation?

A. Salesman.

Q. By whom are you employed?

A. The Pennzoil Company.

Q. How long have you been employed in that capacity?

A. 19 years, as a salesman.

Q. In what area or territory, Mr. Ellis, have you been assigned as salesman during this period?

A. During the entire period I have been in one territory, with the exception of two years I spent in San Diego. I

was in San Diego from 1940, in January, to 1942, in March. The rest of the time was spent in the area between Los Angeles City limits and the east city limits of the City of Ontario. Then from Garvey Boulevard north to the Foot- [fol. 691] hills, with the exception of Pasadena.

Q. Will you state generally what your duties as salesman are with respect to the trade that you solicit?

A. My duties are to call on all service stations, specialized repair shops and motor car dealers in my territory.

Q. Have you, during the course of your experience, called on those service stations selling petroleum products of the brand of the Standard Oil Company, the Chevron Stations?

A. I have.

Q. Have you ever called on a service station operated by Mr. Lewis S. Crawford, located at 1701 West Main Street, Alhambra?

A. I have.

Q. When did you first make sales, or attempt to sell Pennzoil products at this service station?

A. Well, I sold oil to that station up to the time of January——

Q. I want to know the first time that you called upon Mr. Crawford, approximately.

A. Do you mean the month?

Q. Well, the year.

A. 1945.

Q. Do you recall whose gasoline and petroleum products [fol. 692] Mr. Crawford was retailing at that time?

A. Douglas.

Q. A Douglas station?

A. That's right.

Q. As a result of your calls during that period, were you successful or unsuccessful with respect to selling Pennzoil lubricating oils and greases?

A. Yes.

Mr. Hall: May I have the question and answer read?

(Question read by the reporter.)

The Witness: May I ask the prosecuting attorney a question: Do you mean at the time, at the Douglas station?

By Mr. Somerville:

Q. 1945, the time you are referring to.

A. Yes, that is correct.

Q. Did you make additional calls after this original call?

A. Every two weeks.

Q. And you made sales of lubricating oils and greases several times?

A. Yes.

Q. How long did those sales continue?

A. Until January of 1946.

Q. Did you call upon Mr. Crawford again after January, 1946?

[fol. 693] A. Yes.

Q. Were you successful?

A. No.

Q. At the time you again attempted to sell Mr. Crawford did he express any dissatisfaction with Pennzoil products?

A. No.

Mr. Hall: That is objected to as calling for the conclusion of the witness; hearsay; no proper foundation laid.

Mr. Dixon: If the Court please, we wish at this time to present to your Honor, and to counsel for the defendants, memoranda covering this question which has been previously considered by your Honor, in part, and we submit that a re-examination and consideration of the authorities here will show that questions of this character are admissible in evidence to show the motive of the person whose business is being solicited for not purchasing the products, or dispensing with any further purchases of the products. We suggest the cases here, your Honor, clearly allow this type of questioning for the purpose we have mentioned; and I believe your previous discussion of the matter is contained on page 189 of the record, where counsel for the defendants raise the principle in the decision in the Buckeye Powder Company case, the opinion in which case was written by Justice Holmes. You will note in the memoranda we have submitted to your Honor that the very learned Justice Holmes has allowed defendant relied upon [fol. 694] loss of custom to show damages, and the only way he had to prove it was by statements of the customers whose custom he lost, as to why they discontinued the handling of his products.

Here, we have a written contract which binds the individual station operators to get their entire requirement from the defendants so that, as I view the question, the only thing that is material is the fact that the man declined to give an order. Then the rest of it is a conclusion which would be barred for that reason, aside from the hearsay rule. That is the way I took it. If we are talking about motive, the question arises whether in a case like this, where you are relying, to prove the contract, upon a written undertaking which the Court must interpret, whether the motive of one of the parties to that contract, as expressed in a conversation to a third party, where the representatives of the defendants were not present, is material under any theory.

Mr. Hall: There is another argument, I think, your Honor. This dealer, let us say for example, may have expressed the view that they did not want to buy Pennzoil because they liked some other brand of oil better; or they might have expressed the view that they did not want to buy Pennzoil because they felt themselves obligated to Standard.

The Court: The latter alternative is the only one in [fol. 695] this type of questions in the previous case for the limited purpose for which the Government is offering this type of testimony in this case.

The Court: Wait until I run through this. I will hear you, Mr. Hall.

Mr. Hall: The question is whether the fact that a dealer says something to a salesman is, in and of itself, material, or whether, on the other hand, the Government is relying upon the truth of what the dealer said to the salesman. That is the only way you can get around the hearsay rule here.

The Court: I may say this: The way I took the question before, and the way we argued, was that it called for the reason, and not the motive. The motive is an entirely different thing from reason. Reason is grounded on matters which may be factual. Motive is a hidden purpose a man may have in doing a thing. In the cases Wigmore uses in this paragraph, which is cited here, he seems to use both words as being synonymous.

As I take them, they call for a fact, and that is a ground for refusal, which would be hearsay, for the reason that we are dealing here with a written contract. I am familiar

with the cases cited, except that I confess I did not remember that they covered the particular point. But it is apparent that in Lawlor vs. Loewe. That was a civil action under the Antitrust Law to recover treble damages, and the [fol. 696] — which counsel for the Government are interested. They are not interested in determining the relative merits of the various grades of oil.

Mr. Hall: But what I say I think illustrates my point that these dealers are not brought in, they are not subject to my cross examination. Therefore, what factual reason they assigned for their refusal to buy Pennzoil products would be hearsay, and not within exception to the hearsay rule.

Now, if it were simply a case of materiality of what they had said, and not the facts they assigned as a reason for what they say, then I think there would be force to counsel's contention, that this evidence should go in; but that is not what they are trying to do. They are trying to bring in at second hand a statement of reasons why the dealer did not purchase the particular lubricating oil. We all know that where the fact, in and of itself, that a statement was made, or that a notice was given, is material to the case, then that statement may be put in evidence, despite the hearsay rule, but when they attempt to establish as a fact the facts which are embodied in the statement—in other words, when they attempt to bring in the statement for the purpose of proving the truth of the facts narrated in the statement, then the hearsay rule applies. That is the distinction which Mr. Justice Holmes was referring to in the Buckeye case.

[fol. 697] The Court: Anything further?

Mr. Dixon: I believe our position in reference to this question is set forth in the brief. Unless your Honor cares to hear further on it——

The Court: I want to look at the New York poultry case which, of course, was a civil case.

Mr. Hall: May I point out that motive may be demonstrated by what a man says, quite irrespective of the truth of the facts narrated in the statement.

The Court: That is true. I can see the distinction in a case where you are seeking damages, because even if you had a written contract, then the fact that plaintiff must prove loss of custom is directly traceable to the fact, but

the question in my mind is whether, in a case of this character, the grounds assigned are material.

This Greater New York live poultry case, I am familiar with. That was the case which later on developed into the Schechter case. That was the case where the Government made a wrong guess, because the Supreme Court denied certiorari and held that the Schechter Brothers were guilty of Antitrust violation, and that of necessity the same principle would apply. That was an NRA case, and involved interstate commerce, and also the commerce clause, when the control over it was exercised, and the Congress demonstrated they could not apply the same criterion in determining what commerce is, without taking into consideration the particular legislation which was before the Court in the particular case.

[fol. 698] I think in this case, gentlemen, the opinion of Judge Swan gives a good indication of the ruling. I think I will read it. I will begin in the first column on page 159 at the bottom.

(Greater New York Live Poultry C. of C. v. United States, 47 Fed. (2d) 156, at 159.)

"* * * Here a primary object of the conspiracy was control of the poultry trade between marketmen and retailers, which may be assumed to be a local trade, but the record contains evidence to justify a finding that one of the means for effecting that object was the prevention of recalcitrant market-men from obtaining poultry from receivers whether within or without the State of New York, and that the activity of the Truckmen's Union in preventing purchases by such recalcitrants was not merely coincidental but was part of the conspiracy.

"A number of the assignments of error relate to the admission over objection of the testimony of witnesses for the prosecution as to reasons given by receivers for their refusal to sell recalcitrant marketmen. Such statements of reasons, though hearsay, are admissible to prove the state of mind of the declarant if that be in issue."

Citing *Lawlor* v. *Loewe*, Wigmore on Evidence; *Hubbard* [fol. 699] v. *Allyn*, a Massachusetts case.

"They are not admissible, however, to prove the truth of the facts recited as explanation of the state of mind of the declarant. * * * In the case at bar the reasons for the refusals to sell were a material issue, since the Government sought to show them related to the conspiracy and the defendants claimed that the true reasons were entirely different. The appellants would have been entitled to an instruction limiting the probative force of the evidence to that issue—more specifically, warning the jury not to consider the statements as evidence of the truth of the matters asserted therein. * * *"

Then they go on to say that because they did not ask for the instruction. So that the true basis of the ruling is that if the question elicits merely an explanation of the state of mind, it is admissible if that is an issue in the case.

Now, let us go back to the question.

(Question read by the reporter as follows:

"Q. At the time you again attempted to sell Mr. Crawford did he express any dissatisfaction with Pennzoil products?")

The Court: I will overrule the objection.

[fol. 700] Mr. Hall: Your Honor then rules in accordance with this limitation expressed in the opinion your Honor just referred to?

The Court: Yes. I will limit it merely to the motive, so called. I am inclined to think, gentlemen, that the decision to which I referred—*Federal Trade Commission* v. *Morton Salt*—if I read it aright and if it holds that the possibility that a contract may result in restraint of commerce, is a criterion, and that if that is a broadening of the previous ruling, the inquiry becomes material for this reason: Even if we assume that the written contracts did not prevent the dealers from dealing in other products, if in practical application they have that effect, then the inquiry is material.

To that extent I am merely following what I did last

week. But I think I am inclined to go further in view of this late decision and hold that even if it can be argued as a question of law that on their face they did not have that effect, if in reality, in the minds of the dealers, they not only refused but gave as their refusal their belief that they were bound by the contract not to, then we are confronted with a different situation and have a right to inquire into the matter, even though it is hearsay, in order to determine the motivation and the ground given for the action. Because, if the contract, although on its face not [fol. 701] restrictive, in the minds of the people with whom he was dealing had that effect, then it becomes a material issue in the case.

I am trying to think very fast, gentlemen, as I have to, because, as I told you, I did not read this opinion until yesterday and I can see, if I read it aright, that it goes a little further than the previous cases, and in the light of that the inquiry limited to motives is material. I will so limit it. In other words, the answers to be elicited are not to go to the truth of the statements that the dealer may have made, you see. They are not proof of that.

Mr. Hall: In other words——

The Court: They are merely to show the reasons or the motives, to use the word of the decision, which he assigned for his actions. Whether they are called for and justified by the contract and by the circumstances, that is a question which does not enter into it at present.

Have I made myself clear, gentlemen?

Mr. Hall: Yes, your Honor.

Mr. Dixon: Yes.

The Court: Off the record:

(Brief comment off the record.)

Mr. Somerville: Do you have the question in mind or do you wish it read?

The Court: Better read the question again.

[fol. 702] (Question read by the reporter.)

The Reporter: That question was answered.

Mr. Hall: May I have the question and answer?

The Court: Read it again.

(Question and answer read by the reporter.)

By Mr. Somerville:

Q. Did he ever express dissatisfaction during the period preceding the last sale which you made?

A. No.

Q. What reason did he assign for his refusal to buy further products from you?

Mr. Hall: Now, just a minute. That is objected to as calling for a conclusion of the witness, no proper foundation laid.

Mr. Somerville: I will withdraw that question.

Mr. Hall: And leading.

By Mr. Somerville:

Q. Did Mr. Crawford assign any reason for breaking of sales to you?

Mr. Hall: That is the same question and the same objection, your Honor.

The Court: I think, the way it is worded. I would ask him what he said, what, if anything, he said. If you do that, then I will reserve a motion to strike if the answer goes beyond what I said.

Mr. Hall: Pardon me, your Honor. My objection went [fol. 703] further, to the foundation for the question, which has not been laid in time or parties present.

The Court: Yes. If we are beginning to put in persons, if we are going to put in testimony relating to stopping, I think they are entitled to a more definite statement as to the locality and person, if he can remember the person.

By Mr. Somerville:

Q. What was the approximate time, Mr. Ellis, that you called upon Mr. Crawford with respect to making a sale after your last order?

A. In January.

Q. What year?

A. 1946.

Q. At that time was any conversation had with Mr. Crawford concerning his refusal to purchase any more Pennzoil products?

Mr. Hall: Now, just a minute. I do not object to that question, but the foundation for a conversation has not

been laid. We have not either the time or, the parties present stated yet.

Mr. Somerville: We have the time and the parties present. He testified——

Mr. Hall: Or the place of the conversation.

The Court: If you can give more detail, please do.

By Mr. Somerville:

Q. Where did this occur?

A. In the dealer's place of business in his service station [fol. 704] building.

Q. Did you answer that a conversation was held with Mr. Crawford?

A. Yes.

Q. What was that conversation?

Mr. Hall: Just a minute. I would like to know, and I ask again for the question eliciting who was present.

The Court: If you know the name of the people.

By Mr. Somerville:

Q. Was anybody else present?

A. Mr. Crawford and myself.

The Court: All right.

By Mr. Somerville:

Q. What was the conversation?

A. He stated he was sorry that he would be unable——

Mr. Hall: May my objection run to all this conversation, your Honor?

The Court: Yes.

The Witness: Okay.

Mr. Somerville: You may answer.

A. He said he was sorry but he would not be able to handle Pennzoil any longer, and that I would have to pick up my containers. That was the statement made to me.

Q. Did he give any further explanation?

A. Yes; he did. He said that the station would no longer be Douglas as it was being changed to a Chevron station, and that was his reason.

[fol. 705] Mr. Somerville: At this time, your Honor, the Government asks that TBA agreement dated March 1, 1946,

between Louis S. Crawford and Standard Oil Company, produced under subpoena No. 1, item 1, be marked for identification.

The Clerk: Government's Exhibit 45 for identification.

Mr. Somerville: The Government offers Government's Exhibit 45 for identification into evidence as Exhibit next in order.

Mr. Hall: Defendants object to the material offered as irrelevant and immaterial.

The Court: Overruled.

The Clerk: 45 in evidence.

By Mr. Somerville:

Q. Mr. Ellis, during the period that the service station was a Douglas station did you observe anything with respect to what competitive oils and greases were handled?

A. Yes. They handled Pennzoil and Quaker State, MacMillan and, of course, Douglas oils.

Q. Were these products prominently displayed in the station?

A. Oh, yes. Yes. In fact, my product had a sign out in front and so did Quaker State.

Q. After January, 1946, after this service station became a Standard station or a Chevron station, what did you observe with respect to the display of competitive oils?

[fol. 706] A. None.

Q. Did you call upon this station several times after?

A. Yes.

Q. And you never made any additional sales?

A. That is right.

Q. And did you observe any competitive oils displayed in the station?

A. No.

Q. Mr. Ellis, did you call upon a service——

Mr. Hall: Wait a minute. Did the witness answer the last question?

The Reporter: Yes.

Mr. Hall: What was the answer?

(Answer read by the reporter.)

By Mr. Somerville:

Q. Mr. Ellis, did you call upon a service station operated by W. L. Kissinger, located in Ontario, California at 304 East A Street?

A. Yes, sir.

Q. When, approximately, as far as you can remember did you begin calling on this station?

A. Well, it was quite a ways back. In fact I have called on Mr. Kissinger ever since he has been in business; in fact ever since I have been with the Pennzoil company, at one or more locations.

Q. We are speaking with reference to this particular [fol. 707] location, Mr. Ellis. Could you give us an approximation, a year or a month, if you remember?

A. Well, it was at least a year before that.

Q. Name the year, Mr. Ellis.

A. 1942.

Q. 1942. Were you successful or unsuccessful in selling Pennzoil products?

A. At that time?

Q. Yes.

A. Yes.

Q. What was your answer?

A. Yes.

Q. My question was: Were you successful or unsuccessful?

A. I was successful. I am sorry.

Q. Did you continue to make sales of lubricating oils and greases to Mr. Kissinger?

A. I continued to sell oil; yes.

Q. Did you contact anyone other than Mr. Kissinger at this station with respect to sales of your product?

A. Yes; I did.

Q. Who?

A. Vern Mortimer.

Q. During what period?

Mr. Hall: Wait a minute. I did not get that name. Will [fol. 708] you speak louder, please?

The Witness: Vern Mortimer.

Mr. Somerville: I would like to call for Government's Exhibits 23-X, 23-L, 23-M, 23-N, and 23-O and -P.

May the record show at this point that Government's Exhibit 23-K is a lease dated June 4, 1943, between W. L.

Kissinger and Zoe Kissinger, his wife, and Standard Oil Company of California.

Government's 23-P is a dealer agreement TBA, dated February 1, 1946, between Vern Mortimer and Standard Oil Company of California covering the premises at 304 East A street, Ontario, California.

Mr. Ellis, what was the last time that you made a sale to Mr. Kissinger or to Mr. Mortimer at this station?

A. July, 1943.

[fol. 709] Q. In what capacity was Mr. Mortimer occupying this station at that time?

Mr. Hall: I object to the question as calling for the conclusion of the witness, and speculation and conjecture.

Mr. Somerville: The question may be withdrawn.

Q. Mr. Ellis, did you ever contact Mr. Mortimer prior to 1943, with respect to sales of your Pennzoil products?

A. Yes, I did.

Q. And at that time was Mr. Kissinger manager of that station?

Mr. Hall: Objected to as calling for the conclusion of the witness.

The Court: You can't prove agency by the declaration of an agent. He may describe what, from his own observation, the man was doing at that place. That is about all.

Mr. Somerville. Yes.

Q. Will you describe that?

A. Mr. Mortimer was manager for Mr. Kissinger up until——

Mr. Hall: Wait a minute. I move to strike the answer of the witness.

The Court: Strike it out.

By Mr. Somerville:

Q. Were Mr. Kissinger and Mr. Mortimer working at this station at the same time?

A. Yes.

Q. When was the last sale that you made at this station?

[fol. 710] A. In July, 1943.

Q. Did you again contact anyone at this station?

A. I did.

Q. Who did you contact?

A. Mr. Mortimer.

Q. Did you observe anything with respect to the station at this time different from your previous visits?

A. Yes, I did.

Mr. Hall: Objected to upon the ground that no foundation has been laid. The time has not been shown, which you are talking about.

By Mr. Somerville:

Q. Approximately when did you recontact Mr. Mortimer?

A. I contacted him every two weeks in each month, and 1943 was the last order I got; in July, 1943 was the last order I got.

Q. The first time that you contacted him, two weeks later, after this order, was there any change with respect to this station?

A. Yes, there was.

Q. What was that change?

A. It had changed from a Hancock station to a Chevron station.

Q. Did Mr. Mortimer express any dissatisfaction with Pennzoil products?

[fol. 711] A. No, he did not.

Q. Had he ever expressed any dissatisfaction of Pennzoil products?

A. No.

Q. At this time, that you recontacted Mr. Mortimer, were any other persons present?

A. Not to my knowledge; just myself and him, in his station building.

Q. Were any conversations held concerning the reasons for his refusal to purchase more Pennzoil?

Mr. Hall: Are you referring to the visit within two weeks after some date in July, 1943?

Mr. Somerville: Yes.

Mr. Hall: He may answer yes or no.

Mr. Somerville: Do you want the question reread?

The Witness: Yes.

(Question read by the reporter.)

The Witness: He said due to the——

Mr. Hall: Wait a minute. That can be answered yes or no.

The Court: Yes.

By Mr. Somerville:

Q. Were conversations held?

A. Yes.

Q. What were those conversations?

Mr. Hall: That is objected to as calling for hearsay: [fol. 712] no proper foundation laid.

The Court: Lay a better foundation.

The Witness: I was told at that time I would have to have my containers picked up, as they would not be allowed to carry outside oil in the future, and they would have to get rid of all their outside oils.

By Mr. Somerville:

Q. Prior to the time that this station became a Standard Oil or Chevron station, did you observe anything with respect to competitive brands of oils and greases handled?

A. I did.

Q. What did you observe?

A. That carried in stock Hyvis, Valvoline, Quaker State, Pennzoil and Hancock.

Q. After this station changed to a Standard or Chevron station, what did you observe?

A. All Standard products on the shelves.

Q. No competitive oils were displayed?

A. That's right.

Q. Are you acquainted with a service station located at 25 East Valley, San Gabriel, California?

A. Yes, I am.

Q. Have you ever contacted that station with respect to making sales?

A. Yes.

[fol. 713] Q. When did you first contact that station?

A. That would go back quite a few years.

Q. Approximately?

A. That would go back at least to 1936.

Q. Who did you contact at that time?

A. Mr. Moreland.

Q. What brands of gasoline and oils were displayed at this station?

A. He changed gasoline several times. He put Wilshire in there at one time. I don't remember all the different brands he changed in that period of years.

Q. Did you make several sales to Mr. Moreland?

A. He was a steady customer.

Q. When was the last sale that you made?

A. It was April, 1945.

Mr. Hall: Was that M-o-r-e-l-a-n-d?

Mr. Somerville: Yes, Clarence A. Moreland.

Q. Did you make any further attempts to sell your products at this station?

A. Yes, I did.

Q. When?

A. Every two weeks from then on.

Q. Who did you contact upon your revisit?

A. Mr. Russell.

Q. Did you observe anything with respect to the type [fol. 714] of station that was operated?

A. It was strictly a Chevron station.

Mr. Somerville: The Government asks that dealer agreement TBA, dated March 24, 1947, between W. A. Russell and C. L. Russell, parties of the first part, and Standard Oil Company, party of the second part, and the letter dated September 11, 1947, between Standard Oil Company and W. A. Russell, which was produced pursuant to Subpoena No. 1, Item 6, be marked for identification.

The Clerk: Government's Exhibit 46 for identification.

By Mr. Somerville:

Q. Upon your revisit, at the time you observed that Mr. Russell was operating the station, did you observe anything with respect to the type of accessories, such as tires, tubes and batteries sold by this station?

A. No, I can't answer that truthfully.

Q. Did you observe anything with respect to whether or not Atlas tires, tubes and batteries were advertised on the front of the station?

A. I would hate to answer that.

Mr. Hall: What is the answer?

The Witness: I did not answer it.

Mr. Somerville: Mr. Hall, in response to the subpoena, in respect to this particular item, I believe there is a preceding TBA agreement, superseded by this agreement. May we have you check on that?

[fol. 715] Mr. Hall: We will investigate it this afternoon. You realize, we don't keep all of our agreements down here at counsel table?

Mr. Somerville: Yes, I realize that. The Government moves the admission into evidence of Government's Exhibit 46 for identification.

Mr. Hall: The defendants object to the offer, and to the offer of each and all of the documents included in the exhibit, upon the ground that they are irrelevant and immaterial.

The Court. I will look at them. Overruled.

The Clerk: 46 in evidence.

By Mr. Somerville:

Q. Were you ever able to make any sales to the Russell Brothers?

A. No.

Q. Was any reason given—I am referring now to the first time that you called upon the Russell Brothers, which I believe you testified was 1945, July, 1945?

A. April, I think it was.

Q. 1945?

A. Yes.

Q. At that time who did you approach in respect to making sales?

A. Mr. Russell.

Q. Was anybody else present?

A. Not to my knowledge.

Q. Where was this?

[fol. 716] A. In his station.

Q. Were any conversations held?

A. Yes, he took——

Q. Were any conversations held with respect to the sale of Pennzoil products at that station?

Mr. Hall: I would like to have the time fixed more accurately, your Honor.

Mr. Somerville: The witness testified April, 1945, and testified that it took place at the station, and the parties present.

The Court: You may bring that out on cross-examination,—any additional details.

(Question read by the reporter.)

A. I was told——

Mr. Hall: Objected to. No proper foundation has been laid and it is hearsay.

The Court: Overruled.

A. I was told that I would have to pick up my containers, and that they would not be able to handle Pennzoil.

By Mr. Somerville:

Q. Were any further reasons assigned?

A. It was obvious——

Mr. Hall: No.

The Court: That will be sufficient.

By Mr. Somerville:

Q. Are you acquainted with Mr. S. P. Myers, 1975 East [fol. 717] Valley, Rosemead, California?

A. I am.

Q. Have you attempted to sell Pennzoil products to Mr. Myers?

A. I have.

Q. Describe the circumstances which led to your contact with Mr. Myers with respect to handling Pennzoil products?

A. I had not been calling on Mr. Myers. Then we got an indirect order through our office by phone for a case of Pennzoil. I contacted him for that purpose, and he told me that he bought that case of oil——

Mr. Hall: Just a minute. That is objected to,—any conversation without the foundation being laid.

The Court: Give the time and place.

By Mr. Somerville:

Q. Did you then approach Mr. Myers with respect to making regular sales of Pennzoil products?

A. I did.

Q. When did this occur?

A. February, 1948.

Q. Where?
A. In his station, at that address.
Q. Who was present?
A. Mr. Myers.
Q. Were any conversations held with respect to Mr.
[fol. 718] Myers handling your products?
A. Yes, there was.
Q. What were those conversations?

Mr. Hall: I object upon the ground that no proper foundation has been laid, and it is hearsay.

The Court: Overruled.

A. I called in response to this indirect order, to find out if I could make further sales, and he told me that he bought this particular case of oil for one customer that had demanded it, and he was not in a position to stock Pennzoil at that station.

By Mr. Somerville:

Q. In that sales approach, Mr. Ellis, did you ask if he had calls for Pennzoil products at his station?
A. Yes, I asked him that question.
Q. What did he answer?
A. He said he had calls for it.
Q. Nevertheless, you were unable to sell it?
A. That's right.
Q. Have you called upon a station operated by Mr. Dwight W. Shirk, 2109 Fourth Street, LaVerne, California?
A. I have.

Mr. Somerville: At this point, I would like marked for identification these documents produced under Subpoena No. 1, Item 7 which relate to the service station at 1959
[fol. 719] East Valley Boulevard, Rosemead, California, including dealer agreement TBA, dated May 20, 1946, between A. N. DeRush and the Standard Oil Company of California, and an assignment of this agreement to S. P. Myers, effective as of September 1, 1947.

The Clerk: Government's Exhibit 47 marked for identification.

By Mr. Somerville:

Q. Mr. Ellis, when did you first call on Mr. Shirk?
A. That was a long time ago.

Q. Was it prior to 1945?

A. Oh, yes, many years.

Q. Were you able to sell him lubricating oils and greases of your company?

A. I was.

Q. Were those sales substantial?

A. They were very substantial.

Q. Approximately how many gallons, on an average, did you sell him of lubricating oils?

Mr. Hall: Why don't you tie it in with a period?

By Mr. Somerville:

Q. You say you sold to Mr. Shirk for a period of several years?

A. Oh, yes.

Q. What types of gasoline and oils were handled at this station during the period preceding August, 1945?

A. Well, previous to that time,—that's at the time that [fol. 720] it became an actual Chevron station,—prior to that it was Standard Oil, and prior to that I believe—I can't truthfully remember what the gasoline was previous to that time.

Q. Approximately when did that station become a Standard Oil Company station?

A. Well, I would say about 19——

Mr. Hall: Don't your documents answer that question?

Mr. Somerville: Yes.

The Witness: Close to 1944. Approximately that. I don't remember the exact date that was a Chevron station.

Mr. Somerville: The Government asks that the documents brought in in response to Subpoena No. 1, Item 8, relating to the service station at 2409 4th Street, be marked for identification. This group of documents includes dealer agreement TBA dated August 23, 1945, between Standard Oil Company of California, and Dwight W. Shirk.

The Clerk: Government's Exhibit 48 for identification.

By Mr. Somerville:

Q. Did you observe anything with respect to the types of oil handled at this station prior to the time it became a Standard or Chevron station?

A. He had several other brands besides mine. I am quite sure he handled Quaker State at one time.

Q. After this station became a Standard Oil Station, or Chevron station, were you able to make additional sales of [fol. 721] oils or greases?

A. Yes, I was. That is while it was a Standard Oil station.

Mr. Hall: What was the answer to the last question?

(Answer read by the reporter.)

By Mr. Somerville:

Q. When did you last sell Pennzoil products to Mr. Shirk?

A. February, 1945.

Q. Did Mr. Shirk express any dissatisfaction with Pennzoil products at this time, or subsequently?

A. Not at all.

Q. Did you again contact Mr. Shirk with respect to making sales?

A. I did.

Q. Were you successful or unsuccessful?

A. Unsuccessful.

Q. After the last order that you placed, approximately when was it that you recontacted Mr. Shirk with respect to further orders?

A. Two weeks.

Mr. Hall: What was the date of the last order?

Mr. Somerville: I believe the witness testified October, 1945, wasn't that right?

The Witness: No, February, 1945.

By Mr. Somerville:

[fol. 722] Q. February, 1945. It would be two weeks later. Where did you call on Mr. Shirk?

A. At his station.

Q. Were any other parties present?

A. I can't remember that.

Q. Were any conversations held with respect to the continuation of sales of Pennzoil products?

A. There were.

Q. What were those conversations?

A. Well, I was told in so many——

Mr. Hall: Just a minute. Objected to upon the ground that no proper foundation has been laid, and calling for hearsay.

The Court: All right.

By Mr. Somerville:

Q. This conversation occurred sometime in February or March, 1945, and you don't recall whether any parties were present other than Mr. Shirk, is that correct?

A. I don't believe there was anybody present except myself and him.

Q. Did you ask Mr. Shirk——

Mr. Hall: Please don't lead the witness, counsel.

By Mr. Somerville:

Q. Did you attempt to sell further Pennzoil products to Mr. Shirk?

A. I did.

Mr. Hall: Just a minute. I move to strike the answer of the witness. I did not have a chance to get in my objection.

[fol. 723] The Court: This is merely a preliminary question. It is leading to something.

Mr. Hall: I don't object to the conversations after the foundation is laid, but I think this question is a little different.

The Court: No. He merely asked him if he attempted to do that and he said yes. That was a preliminary question. Now he may ask him when and where.

By Mr. Somerville:

Q. Were any conversations then had with respect to Mr. Shirk continuing to sell your products?

A. There were.

Q. What were those conversations?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

The Witness: I was told that under existing circumstances he would no longer be able to handle Pennzoil.

By Mr. Somerville:

Q. Did he assign any further reason?

A. Other than it was a Standard Oil station.

Q. Have you ever contacted a service station located at 801 Alosta Avenue, Glendora, California?

A. I have.

Q. What is your answer?

A. I did.

Mr. Somerville: The Government offers into evidence Exhibit No. 48 for identification, with the documents, relat-
[fol. 724] ing to the service station at 2109 Fourth Street, La Verne, California.

Mr. Hall: The defendants object to each and all of the documents on the ground that they are irrelevant and immaterial.

The Court: Overruled. They may be admitted.

The Clerk: 48 in evidence.

Mr. Somerville: The Government asks that Government's Exhibit 47 for identification be introduced into evidence.

Mr. Hall: The defendants object to each and all of the documents so offered upon the ground that they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: 47 in evidence.

By Mr. Somerville:

Q. Did you contact this station during the period that it was operated by Champion & Bissonette?

A. I did.

Mr. Hall: I hesitate to interrupt, but you have me confused on the stations. Is this the DeRush station, or the Glendora station?

Mr. Somerville: This is a Glendora station.

Mr. Hall: What happened to the DeRush station?

Mr. Somerville: Those documents were offered into evidence.

[fol. 725] Q. Did you contact this service station at any time during the period when it was operated by Mr. Champion and Mr. Bissonette?

A. I did.

Q. When was this period?

A. During the years 1947 and 1948.

Q. Did they purchase any oils and grease from you?

A. They purchased one order in October, 1947.

Q. Did they make any additional purchases?

A. No.

[fol. 726] Q. What did you observe with respect to the manner in which Pennzoil was handled by them on the order that you did place with them?

A. It was placed inside of a small back room out of sight.

Q. Did either Mr. Champion or Mr. Bissonette indicate an interest in Pennzoil as a regular stock item?

The Witness: I didn't get the question.

Q. Did they indicate an interest in Pennzoil products as a regular stock item?

Mr. Hall: Wait a minute. That is objected to as no proper foundation laid. We haven't had the time, place, nor parties present as to the conversation.

The Court: Fix the time of the talk.

By Mr. Somerville:

Q. When was this sale made, Mr. Ellis?

A. October, 1947.

Q. And who did you talk to at that time?

A. Mr. Champion and Mr. Bissonette, both of them.

Q. Was anybody else present?

A. No.

Q. And this was at the service station that they operate?

A. That is correct.

Q. And you attempted to place orders for additional [fol. 727] stocks of oil in the future?

A. I did.

Mr. Hall: Just a minute. That is just the question I registered an objection to a moment ago as leading.

The Court: Ask him if he had any further agreement with them and what it was about.

By Mr. Somerville:

Q. What conversations, if any, were held concerning a stock of Pennzoil products?

A. Well, each time I solicited them after that, they had plenty on hand after that one order.

Q. Pardon?

A. Each time I called after two weeks after that they had plenty on hand after that former order.

Mr. Hall: I move to strike out the answer of the witness as not responsive. The question calls for conversation.

The Court: Did he tell you that?

The Witness: That is right; they had plenty in stock.

The Court: All right. Overruled, so long as you give it as a statement.

By Mr. Somerville:

Q. Was any further reason assigned?

A. No.

Mr. Somerville: That will be all, Mr. Ellis.

The Court: All right. Gentlemen, I purposely did not break the continuity of the examination so we would reach a good stopping point. And, as I have already informed [fol. 728] you, I am due to address the Lawyers Club at their luncheon. So if we take a recess for five or 10 minutes we will only have 10 minutes and we can't achieve very much. So I think we will break the rule and return earlier.

Mr. Somerville: If your Honor please, may I ask that this document produced under subpoena No. 1, item 9, which relates to the service station at 801 East Alosta Avenue, Glendora, California, be marked for identification. It includes the dealer agreement TBA, dated September 25, 1947, between Bissonette & Champion, and Standard Oil Company of California.

The Court: You are asking it be marked only for identification?

Mr. Dixon: Put it in evidence.

The Court: Are you offering it in evidence?

Mr. Somerville: Yes.

The Court: Has it been marked before?

Mr. Somerville: No; it has not been marked. My next thought is to mark it in evidence.

The Clerk: 49 marked for identification only.

The Court: All right.

Mr. Somerville: I will ask that this be introduced into evidence, your Honor.

The Court: All right.

Mr. Hall: Defendants object on the ground that each [fol. 729] and all of the documents are irrelevant and immaterial.

The Court: If they are the same type as those I have admitted, I will allow them. I will take a look. You may step down, sir.

Mr. Hall: The witness, I assume, is going to return this afternoon?

Mr. Dixon: Oh, yes.

The Court: Oh, yes. You will have to return for cross-examination. They are of the same type of agreement and letter covering the matter, TBA agreement. Overruled.

The Clerk: 49 admitted in evidence.

The Court: All right. At this time, gentlemen, we will take our regular adjournment until 2:00 o'clock. I am certain I shall not be delayed because they promised to adjourn promptly, and I am going to try to see if I can practice, myself, the injunction I give lawyers to return at the allotted time, 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p. m. of the same day, Wednesday, May 12, 1948.)

[fol. 730] Los Angeles, California, Wednesday, May 12, 1948. 2:00 P. M.

The Court: All right, gentlemen.

The Clerk: Just take the stand, sir.

HARRY R. ELLIS (Recalled).

Cross-examination.

By Mr. Hall:

Q. Where is your headquarters office that you work out of, Mr. Ellis?

A. Los Angeles.

Q. What address?

A. 942 South Hope.

Q. That is the Pennzoil Building, isn't it?

A. That is right.

Q. How long has that been your headquarters?

A. Well, I don't just remember the exact number of years but we have been there quite a while. It goes back before the war.

Q. Before the war?

A. Yes, sir.

Q. I think you said you had been a salesman for 19 years, with the exception of two years, is that right?

A. Well, I was a salesman those two years, too, but not in this locality.

Q. Not in this locality?

[fol. 731] A. That is right.

Q. How long have you been a salesman for Pennzoil in this locality?

A. A total of 17 years.

Q. 17?

A. Yes.

Q. What were the years you were in some other locality?

A. 1940 and '41.

Q. Except for 1940 and 1941 you have been a Pennzoil salesman in this area that you mentioned this morning, is that right?

A. That is correct, with the exception of those two years.

Q. What?

A. With the exception of those two years that you just mentioned.

Q. You have had the same area during those 17 years?

A. Well, not exactly. The territorial lines were changed a little from the way they were when I first took over.

Q. Well, let me put it this way: For how many years have you had substantially the same locality that you are now canvassing?

A. Well, the bulk of the territory has been 17 years.

[fol. 732] Q. Who is the superior in the company that you report to?

A. Fred Williams.

Q. Fred Williams?

A. That is right.

Q. Do you make written reports to him?

A. I do not.

Q. You do not make written reports of any kind?

A. Only expense accounts.

Q. Have you ever made reports of any kind to him except expense accounts?

A. Oh, occasionally, when they want some special data as to progress of business in the field.

Q. Does the company take any procedure for checking your movements as a salesman?

A. I imagine the supervisors keep pretty good tab on us.

Q. And that has been the case for a number of years?

A. That is right.

Q. Do you keep a diary yourself?

A. I don't keep a diary but I keep a cardex record of my sales by every month, or I get a copy of the invoices of all the sales I make and I post a cardex record.

Q. Do you enter in the card index anything but sales?

A. No.

[fol. 733] Q. You do not indicate when you call on a person?

A. Yes; I do.

Q. You do?

A. I do. On this card, on the front side of the card, I put a date under the column marked "order" if I get an order; and if I don't get an order I put it just under "call", the date.

Q. Have you got an index card for the six dealers you referred to in your testimony this morning?

A. Well, if I haven't in my possession at this time, I have at the office?

Q. You have at the office?

A. Yes.

Q. Have you consulted those recently?

A. Yes, sir; I have. I have looked at every one of them to make sure that my records agreed with those.

Q. In the year 1939 how many separate accounts did you sell Pennzoil to in your area?

A. Well, that would be a pretty hard question to answer because I can't remember how many there were at that time.

Q. Well, give us an approximation.

A. Well, I would say around possibly 300 in my territory.

Q. And during the year 1947 approximately how many [fol. 734] separate accounts did you sell to in your area?

A. Well, I would say active accounts possibly maybe 250.

Q. I am not asking you for active accounts. I am asking you how many you sold during that year, separate accounts.

A. Well, that would be the same answer.

Q. 250?

A. Yes.

Q. How much for the year 1946?

A. I don't believe '46 would be any different much than '47.

Q. During 1947 how many separate retail outfits did you contact where you did not make sales?

Mr. Somerville: Object, your Honor, irrelevant and immaterial.

The Court: Read the question, please.

(Question read by the reporter.)

The Court. Overruled. If you remember.

[fol. 735] A. I cannot answer that question accurately.

Q. Did you answer the question?

A. I say I cannot answer that question accurately.

Q. I am just asking you for your best recollection.

A. That varies too much.

Q. Between what limits would it vary for the year 1947?

A. Do you mean over previous years?

Q. No.

A. I don't understand your question.

Q. Let me reframe my question. During the year 1947 approximately how many different retail outlets did you contact that you didn't sell to?

A. That's an impossible question to answer.

Mr. Somerville: I object, your Honor, upon the ground that it is irrelevant.

The Court: He doesn't know. He can't answer.

The Witness: I can't answer that question.

Mr. Somerville: It is not within the scope of the direct either.

By Mr. Hall:

Q. It is a fact, isn't it, that during 1947 you contacted a lot of retail outlets where you did not make sales, is that correct?

A. Naturally; you always do.

Q. That would be true for 1946, wouldn't it?

A. That would be true for any year. Every salesman [fol. 736] does that.

Q. Where do you get your prospects?

A. Where do I get them?

Q. Yes.

A. By keeping my eyes open as I drive throughout the territory.

Q. You just see a likely gas station and you pull in, is that right?

A. That's right.

Q. How much time do you spend talking to the gas station man?

A. That depends upon what my prospects are of selling the prospect.

Q. How many calls do you make a day, on an average?

A. I think the average is around 30 calls a day.

Q. 30 calls a day?

A. Yes.

Q. How frequently do you call on the same outlet?

A. Every two weeks.

Q. Is that a regular practice with you?

A. That's right.

Q. So, just to be sure I understand you, whether you make a sale or not, you call on the same outlet every two weeks?

A. That's right.

[fol. 737] Q. Are there any other Pennzoil salesmen that cover the same area that you cover, or is that area here exclusively for you?

A. So far as dealer outlets are concerned, that is, retail outlets, that is a closed territory of mine.

Q. In 1947 how many other salesmen were working for Pennzoil out of the Los Angeles office, at your headquarters?

A. Offhand, I could not answer that.

Q. Approximately?

A. Out of the Los Angeles office?

Q. Yes.

A. That would be pretty hard to answer. I would say, maybe 15 or 16.

Q. Maybe 15 or 16?

A. I am just guessing at it. I will tell you that, right now.

Q. We have had a lot of guesses, and yours is just as good as anybody else's. You mentioned this morning a conversation with a Mr. Russell. Do you recall that testimony?

A. That's right.

Q. Was that W. A. or C. L. Russell?

A. There were two of them at the time I called on them—Russell Brothers.

Q. You were talking of both?

A. Yes.

[fol. 738] Q. Let me get this clear now. The conversation or conversations that you had with Russell referred to in your morning testimony, was that with both Russells?

A. Yes, I think that is correct.

Q. When you call at a gas station, do you get out of your car, and park your car, and walk around the station property?

A. I walk into it, yes, into the station building, or wherever the owner happens to be.

Q. That is, you get out, and park your car, that is your usual practice?

A. That is right.

Q. You go into the building, don't you?

A. That's right.

Q. This morning you referred to a service station operated by a man named Crawford, at Alhambra. Do you recall that testimony?

A. That's right.

Q. How frequently did you call on Mr. Crawford during the year 1945?

A. Every two weeks.

Q. How often during the year 1946?

A. Well, after I gave it up as a bad job I didn't do much calling.

Q. When did that happen?

[fol. 739] A. That was right after January, 1946.

Q. Do you recall going to that station after January, 1946?

A. Sure.

Q. When?

A. In February.

Q. Do you recall going there after February, 1946?

A. Yes, I do.

Q. How often?

A. I called there every two weeks. There was a reason for that call.

Q. Every two weeks after February, 1946, up to what date?

A. Well, I would say possibly into at least the end of March.

Q. Did you call at that station at any time during the first three months of 1947?

A. I don't believe I can answer that. I don't remember.

Q. Do you remember calling there at all after March of 1946?

A. No, I don't.

Q. Would you say that you didn't call there after March, 1946?

A. No, I wouldn't say that either.

[fol. 740] Q. You wouldn't say either way?

A. No.

Q. While your memory is very clear as to the January, 1946 date, and as to certain events in 1945, your memory gets weaker after March, 1946, is that right?

A. That's correct.

Q. You recall your testimony concerning that station operated by Kissinger of Ontario?

A. That's right.

Q. I think you said the last sale at that station that you made was July, 1943, is that right?

A. That is correct.

Q. Did you call at that station after that time?

A. Every two weeks.

Q. Every two weeks until what date?

A. Well, it must have been at least six months after that time.

Q. For at least six months?

A. Yes, sir.

Q. Did you call at that station at all in 1946?

A. Yes, I did occasionally.

Q. Did you call at that station during the first three months of 1947?

A. I don't believe I did, in 1947.

Q. Did you call there at all in 1947?

[fol. 741] A. No.

Q. In 1946 did you see any lubricating oil for sale at that station other than oil that was sold by Standard?

A. I did not.

Q. Did you go out and walk around the station?

A. I always go out and walk around the station, and walk into the station, in fact.

Q. You didn't see any lubricating oil, other than the Standard product?

A. No, I did not; that's right.

Q. You are quite sure of that?

A. I am quite sure of that.

Q. The Russell station in San Gabriel, do you recall your testimony concerning that?

A. That's the one you just asked me about.

Q. The last one I asked you about was the Kissinger station in Ontario?

A. Just before that you asked me about Russell Brothers, before Kissinger.

Q. I asked you which you called on. You recall your testimony about the Russell station, the Russell episode, don't you?

A. Yes.

Q. Your sale there was April, 1945?

A. That's right.

[fol. 742] Q. Did you call at that station after that date?

A. Yes, I did.

Q. Up until what time?

A. Well, I made several calls. As I told you before, there was a particular reason for making the calls.

Q. Then you stopped making them?

A. That's right.

Q. I think you said you went there during the first three months of 1947?

A. That's right—I didn't call in 1947.

Q. At one or two places in your testimony this morning, you referred to some statement made by one or more of these station operators, that you were to take out your containers. Do you remember that testimony?

A. That's right.

Q. What were those containers?

A. Some of them were 15-gallon sealed containers on a stand, and others were highboys.

Q. Are those containers furnished free of charge to the operator?

Mr. Somerville: That is objected to as irrelevant and immaterial to any issues in this case.

The Court: It is material. He may answer.

The Witness: What was the question again?

Mr. Hall: Will you read the question?

[fol. 743] A. In some cases they are highboys. As a rule, in a case of this kind they are loaned, and the sealed containers are, I believe, some of them are loaned, and we had a policy at one time where they were on deposit. The dealer put up a small deposit on them, to be sure that we would get them back.

Q. In referring to the station at LaVerne, operated by Shirk, this morning, in your testimony, you said something about selling your products to that station after it became a Standard station?

A. That is correct.

Q. Do I have that incorrectly?

A. No, that is correct.

Q. Was that at one time a Standard station, as distinguished from a Chevron station?

A. I believe that is correct.

Q. When it was a Standard station you sold Pennzoil to the station?

A. I did.

Q. Do you recall the period during which that station was a Standard Oil station?

A. I think they became Standard Oil in 1941.

[fol. 744] Q. And became a Chevron station when?

A. I think, in 1944. I am not positive of it but that is my recollection.

Q. But while it was a Standard station you sold Pennzoil to the station?

A. I did.

Q. These containers that you speak of that are put in the station by Pennzoil are exclusively for the handling of Pennzoil products, aren't they?

A. That is right.

Q. Your company does not permit them to be used for any other product?

A. That is right.

Mr. Hall: That is all.

The Court: Any redirect?

Mr. Somerville: Yes.

Redirect Examination.

By Mr. Somerville:

Q. Calling your attention, Mr. Ellis, to your call on Mr. Crawford during the month of February, 1946, I believe your testimony was that you had some reason for calling; is that correct?

A. That is right.

Q. What was that reason?

A. Checking on these containers to see when I could [fol. 745] take them out.

Q. Now, with respect to matters of the dates to which you have testified this morning have you checked your records, your own personal records, and company records to refresh your memory?

A. I have.

Q. And with respect to the matters to which you have testified, there was something extraordinary, was there, that set that time out apart from calls, regular calls?

Mr. Hall: Wait a minute. Now, wait a minute. That is objected to as no proper foundation laid, leading and suggestive, and incompetent, irrelevant and immaterial.

Mr. Somerville: I concede that, Mr. Hall.

Mr. Hall: Do you withdraw the question?

Mr. Somerville: I withdraw the question.

The Court: All right.

By Mr. Somerville:

Q. Calling your attention now to your calls on the Russell Brothers after April, 1945, you stated that you had reasons for calling there. What were those reasons?

A. Well, I was told to take my containers out of there and I couldn't take them out, though, until they sold the stock out of them, and they were permitted to sell the stock out of them but then they had to get rid of them.

Q. Calling your attention now to the service station [fol. 746] operated by Mr. Shirk, do you know of your own

knowledge whether Mr. Shirk was an employee of the Standard or an independent operator at the time?

A. He was an——

Mr. Hall: Just a minute. That is objected to as calling for a conclusion.

The Court: That objection is sustained.

By Mr. Somerville:

Q. You testified that it was a Standard station, Mr. Ellis, and that sales of Pennzoil were made. Were those made to Mr. Shirk personally or to Standard Oil Company?

A. No; to Mr. Shirk personally.

Mr. Somerville: That will be all.

The Court: All right, you may step down. Call your next witness.

Mr. Somerville: The Government desires to call Verne Mortimer as its next witness.

Verne Mortimer, called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Verne Mortimer.

The Clerk: How do you spell your first name?

The Witness: V-e-r-n-e.

The Clerk: And your last name?

[fol. 347] The Witness: M-o-r-t-i-m-e-r.

The Clerk: Thank you.

Direct examination.

By Mr. Somerville:

Q. Where do you reside, Mr. Mortimer?

A. 2493 Electric Avenue, Upland, California.

Q. And what is your occupation?

A. Service station operator.

Q. Calling your attention to a service station located at 304 East A Street, Ontario, California, were you at one time employed at this station?

A. That is right.

Q. When did you begin your employment, approximately?

A. In 1932 I went to work for Mr. Kissinger.

Q. How long did you continue as an employee of Mr. Kissinger?

A. Until August 1st, 1943.

Q. Did your duties include making sales of oils and greases?

A. Yes.

Q. And did you make any purchases from Mr. Ellis of Pennzoil Company?

A. Yes, for Mr. Kissinger.

Q. And did you make purchases of other oils for that service station?

A. Yes.

[fol. 748] Q. During this period of time what gasolines were dispensed by this station?

A. Hancock.

Q. During this period of time, Mr. Mortimer, were competitive oils stocked in the station?

A. Yes.

Q. Were they displayed prominently?

A. Yes.

Q. Were there signs directing the motorists' attention to these oil displays?

A. Yes.

Q. What were some of the competitive oils and greases handled during this period?

A. Valvoline, Quaker State, Pennzoil, Hyvis, and the Hancock Brothers.

Q. Did you purchase substantial quantities of oils and greases from Pennzoil Company?

Mr. Hall: Just a minute. Objected to as too general.

The Court: Well, what is "substantial" may be a question.

By Mr. Somerville:

Q. What were the average sales or purchases of Pennz oil that were made?

A. Well, it was a substantial amount but I couldn't quote figures on it. We bought both in bulk and in canned, by the case, several cases.

[fol. 749] Q. Was that true of other competitive oils also?

A. Yes.

Q. What was your testimony with respect to the last date since you were an employee of Mr. Kissinger?

A. I took over the station August the 1st, 1943.

Q. And at that time did you sign a contract with Standard Oil Company?

A. I did.

Q. At that time did you enter into a sublease agreement with Standard Oil Company?

Mr. Hall: Just a minute. Are those in evidence, Mr. Somerville?

Mr. Somerville: No; there is not a sublease agreement, Mr. Hall. There is a TBA agreement dated February 1, 1946. We called in the subpoena for all documents relating to this service station and it appears that some documents that were superseded by that agreement were not brought in.

Mr. Hall: I object to the question on the ground that it characterizes a written document and calls for its contents, as not the best evidence.

The Court: I think the witness may answer if there is such a document. Overruled.

By Mr. Somerville:

Q. Does there exist a contract as of the date you took over operation of this station with Standard Oil Company? [fol. 750] A. To the best of my knowledge there is; I believe there is.

Q. Do you have those documents with you, Mr. Mortimer?

A. No; I do not.

Q. Upon your condensing operations of this station in your own name what gasolines and oils did you dispense and sell?

A. At the beginning I was permitted to keep those oils, the supply of oils that I had, until the supply was exhausted and then we had all Standard products.

Q. Were instructions given to you by Standard Oil Company representatives concerning the stocking of competitive oils and greases?

A. Yes.

Q. When were these instructions given you?

A. At the time of the signing of the agreement.

Q. Where?

A. At the station.

Q. And who were the Standard Oil people who call upon you?

A. The Pomona representatives.

Q. Do you recall his name or their names?

A. A Mr. Burke.

Q. Was there a Mr. Biddle also present?

A. I believe he was. I can't be certain.

[fol. 751] Q. Was that Mr. Louis Burke?

A. That is right.

Q. What were these instructions, Mr. Mortimer?

Mr. Hall: Well, just a minute. No proper foundatio has been laid. We object to the question on that groun

By Mr. Somerville:

Q. You have testified that instructions were given you

A. Yes, sir.

Q. By these gentlemen. What were those instructions

Mr. Hall: No showing has been made of time, place no parties present. On that ground and the lack of founda tion we object.

The Court: You had better lay a foundation as to tim and place.

By Mr. Somerville:

Q. When did you have a conversation with Mr. Burke

A. It was at the time that I took possession.

Q. Where was this conversation?

A. At the station.

Q. What was the conversation?

A. That I was to dispose of the oils on hand and not t replace them.

Q. Did you comply with these instructions?

A. I did.

Q. Were any instructions given to you with respect t [fol. 752] the handling of TBA products, tires, tubes, bat teries, and similar accessories?

A. As soon as they would be available.

Q. Had you been handling competitive tires, tubes, an batteries prior to the time that you took over the opera tion of this station while an employee of Mr. Kissinger's

A. Yes.

Q. Did salesmen for competitive oils and greases call upon you after you commenced operation of this station?

A. Yes.

Q. Do you recall any of the names of the companies' representatives?

A. Well, there was a Quaker State, Hyvis, Pennzoil, and Mr. Ellis with Pennzoil; Mr. McHenry with Valvolene.

Q. Did you make any purchases of oils and greases from these salesmen?

A. I did from Valvolene, from Mr. McHenry.

Q. And did you purchase this in bulk or in cans?

A. In cans and in five-gallon pails.

Q. And where did you keep these oils?

A. Down beneath in cabinets or in the back room.

Q. They were never prominently displayed?

A. No.

Q. Was there any occasion upon which a Standard Oil representative saw these oils?

[fol. 753] A. He may have, but not to my knowledge.

Q. Did you continue to receive calls from your customers for competitive oils such as Quaker State and Pennzoil and Valvolene?

A. I did.

Q. Mr. Mortimer, is your Chevron station identified by any numerical designation?

A. No. 7333.

Q. Calling your attention to the year 1947 have you ever handled Union TX-5 oil?

A. Yes.

Q. How much of this oil did you handle?

A. One barrel at a time.

Q. You made regular purchases of that oil?

A. Yes.

Q. During 1947?

A. Yes.

Q. Commencing about when?

A. Oh, I don't recall exactly. Probably in June or July of '47.

Q. Why did you handle this oil?

A. Due to customer demand.

Q. Did anything occur with respect to your handling this oil in the month of January, 1948?

A. I was told to——

[fol. 754] Q. Answer it yes or no.

A. Yes.

Q. When did that occur?

A. As I recall, in January or February.

Q. And where did it occur?

A. At the station.

Q. And who were present?

A. Myself and a Mr. Burke.

Q. Was there anything said by Mr. Burke?

A. He asked me to dispose of the barrel of TX-5 and its contents and not to replace it.

Q. Did his injunction apply to future handling of the oil as well?

A. Yes.

Q. And did you comply with his instructions?

A. I did.

Mr. Somerville: That is all.

The Court: Cross-examine.

Cross-examination.

By Mr. Hall:

Q. If I understand your correctly, Mr. Mortimer, you were an employee of Hancock Oil Company up until August of 1943?

A. No. I was an employee of Mr. Kissinger during the time from '32 until '43.

[fol. 755] Q. Yes. And then the station became a Chevron station?

A. A Standard station.

Q. A Standard station?

A. A dealer station, a Standard dealer station.

Q. Then you became the dealer for the Standard oil products after that?

A. Yes.

Q. Do you still have the station?

A. No.

Q. When did you dispose of it?

A. March the 13th of this year.

Q. Was that because of dissatisfaction with the treatment accorded you by Standard?

A. No.

Q. What was that Union Oil product that you had this conversation with Mr. Burke about?

A. Oh, T5X.

Q. T5X.

A. That is a diesel motor fuel.

Q. Yes.

A. Motor oil.

[fol. 756] Q. Did the time come when you ceased to have demand for that product?

A. No.

Q. You were a Standard Oil dealer in Standard Oil products from August 1, 1943 to this year, is that correct?

A. No, we became a Chevron station in the meantime.

Q. You still remained a dealer, didn't you?

A. That is right.

Q. You continued to handle Standard's products?

A. That is right.

Q. How many grades of lubricating oil did you handle of the Standard brand?

A. Well, we had in RPM, 10, 20, 30 and 40 and 70; in Zerolene 30 and 40; and in Pennsylvania Oil we had 20, 30 and 40.

Q. That is nine grades, is that right?

A. Approximately, yes. I could be off.

Q. You handled those in bulk, did you?

A. Yes, and some in cans.

Q. You had bulk containers for each grade, didn't you?

A. Yes.

Q. How big were those containers?

A. 60 gallons.

Q. Then for the handling of this line it took nine 60-gallon containers, didn't it?

[fol. 757] A. Yes.

Q. Did you have at that station, during that time that you dealt in Standard Oil products, what you might call regular customers?

A. Yes.

Q. Did you say that the customers who came to the station asked you for lubricating oil other than the Standard brands?

A. Yes.

Q. Did they ask you for any other petroleum products other than the Standard brands?

A. Yes.

Q. What?

A. In oils?

Q. In oils.

A. In oils they asked for——

Q. They did not ask you for something other than the gasoline Standard was selling, did they?

A. No, sir.

Mr. Hall: That is all.

Redirect examination.

By Mr. Somerville:

Q. Did you have pumps other than the Standard gasoline pumps?

A. No. We had a Diesel fuel pump, but it was Standard. [fol. 758] Q. At the time the station was a Hancock station did you handle competitive oils in bulk?

A. Yes, sir.

Q. Did you have containers for those competitive oils?

A. Yes.

Q. And you had Quaker State and Pennzoil and Valvoline, I believe you testified?

A. Yes.

Q. You did not have any difficulty storing those oils?

A. No.

Q. At any time during the period you were a Chevron operator did Mr. Burke, or any other Standard Oil Company representative request the names of customers requesting competitive oils?

A. Yes.

Mr. Hall: I move to strike the answer. I did not have a chance to object.

Mr. Somerville: I think that is a proper question, Mr. Hall.

The Court: The answer may be withdrawn. Read the question.

(Question read by the reporter.)

The Court: Let us have the objection.

Mr. Hall: The objection is that it is not proper redirect examination.

[fol. 759] The Court: It is a general question. Overruled. You may answer.

A. Yes.

Mr. Somerville: That is all.

Recross examination.

By Mr. Hall:

Q. What were these other grades of what counsel alluded to as competitive oils? You mentioned Quaker State, Pennzoil, Valvoline, and what else?

A. Hyvis.

Q. What else?

A. Those are the ones we handled, aside from Standard.

Q. I think he was talking about the period before the station became a station handling Standard Oil products, and you mentioned that you had a number of competitive oils in the station. Do you remember?

A. Yes.

Q. You mentioned the Quaker State, Pennzoil, Hyvis, Valvoline, and what else?

A. And Hancock.

Q. How many grades of each oil did you handle, in bulk?

A. Generally about four—three or four.

Q. Four grades of each one of those? Did you have one of those containers for each of the grades of each of [fol. 760] the oils you mentioned?

A. Some we carried in cans. We did not have highboys for all of those oils.

Q. How many highboys did you have in the station when you were handling these competitive oils?

A. Approximately a dozen.

Mr. Hall: That is all.

Mr. Somerville: You may be excused.

The Court: Call your next witness.

Mr. Somerville: At this time, your Honor, I would like to read into the record some letters already in evidence, aside from Government's Exhibit 23, which is a letter——

Mr. Hall: Pardon me. Wouldn't it be feasible to give the exhibit numbers?

The Court: I am going to read all of the exhibits before I decide the matter. If you want to call my attention to them you may. I have examined quite a number of them already.

Mr. Somerville: I would merely like to call your attention to these particularly.

The Court: If you want any specific portion called to my attention you may do so, either for future argument,

or as preliminary to some question to some witness. In fact, I myself suggested that we would not stop to read the exhibits. I am reading them myself.

Mr. Somerville: I will merely refer to the exhibits, so [fol. 761] they will be in sequence here respecting the testimony. Government's Exhibits 23, 23-T, 23-Y, 23-V and 23-X.

The Court: All right.

Mr. Somerville: The Government calls as its next witness Dwight Shirk.

Dwight W. Shirk called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Clerk: What is your name, please?
The Witness: Dwight Shirk.

Direct examination.

By Mr. Somerville:

Q. What is your residence address, Mr. Shirk?
A. 2458 Third Street, LaVerne.
Q. What is your business or occupation?
A. Now?
Q. Yes.
A. I have an orange grove.

Mr. Hall: I can't hear.

A. Citrus grove.

By Mr. Somerville:

Q. Have you also been in the retail gasoline business at one time?
A. 15 years.
Q. Are you acquainted with the premises located at 2109 Fourth Street in LaVerne?
[fol. 762] A. I owned them.
Q. Did you operate a service station upon those premises sometime in the past?
A. Yes.
Q. When did you operate a service station there?
A. From 1935 until, I think it was March, 1945.
Q. Whose gasoline and oils did you dispense?

A. There is a correction there. I believe it was in March, 1946.

Q. Talk a little louder. I can't hear.

A. I think it was in March, 1946 when I rented the place. I think I made an error in my date. I am not sure.

Q. Answering the last question, whose gasolines and oils did you dispense at this station?

A. At what time?

Q. We will trace it through from the beginning.

A. When I started, in 1935, I think I had a pump of Union, Shell and Economy. I don't remember what the fourth one was.

Q. And did this continue up to 1941?

A. I had what we all a split pump station, and at different times there was different gasoline in those pumps. I think in 1939 and 1940 I had three pumps of Golden Eagle.

Q. When did this cease to be a split pump station?

A. I believe that the Standard products went in the 1st [fol. 763] of November, 1941.

Q. Did you continue to operate the station after the Standard products went in?

A. Yes.

Q. Did you continue to handle competitive gasoline?

A. No.

Q. Did you continue to handle competitive oils?

A. Yes and no.

Q. Prior to the period that it became a Standard Oil station you did sell a number of competitive oils, did you not?

A. That's right.

Q. What were some of the competitive oils that you handled?

A. Pennzoil was the main one. I had large sales of Pennzoil. But I had some others. I had Hyvis; I had Triton, which is a Union product, and I had some Standard Oil in there at different times.

Q. Were those oils prominently displayed in the station?

A. Yes.

Q. Were signs displayed in front of the station?

A. There was always a sign some place in the station for the oils that were handled. However, there was a limit to the number of signs we could have in front of our

[fol. 764] station, due to a city ordinance. So, how many signs were out in front of the station, I would not be sure of that. I know there was a Pennzoil sign.

Q. Leading up now to the time your station became a Standard Oil retail outlet, did any Standard Oil Company representative approach you with respect to entering into a lease of your property?

A. Yes, I think the deal that was finally made was pending for at least a year and a half.

Q. What dates were involved?

A. What?

Q. When did this happen, Mr. Shirk?

A. That would be prior to November of 1941.

Q. Do you recall who the Standard Oil people were that you dealt with?

A. Mainly it was Lewis Burke.

Q. Were any financial inducements offered to you in consideration of your station becoming a Standard station?

Mr. Hall: That is objected to. No proper foundation has been laid.

The Court: I think if you limit it in point of time, it is a preliminary question.

By Mr. Somerville:

Q. When did Mr. Burke approach you with respect to leasing your property, Mr. Shirk?

A. Well, I don't think I can answer that, except that [fol. 765] it was prior to the time, some little time.

Q. Where did these discussions take place?

A. At the station.

Q. Did Mr. Burke say anything with respect to your granting a lease to the Standard Oil Company?

Mr. Hall: Just a minute, if the Court please. We haven't found who else was present.

By Mr. Somerville:

Q. Was there anyone else present, Mr. Shirk?

A. No specific time that I recall, other than just maybe the employees there at the station.

Q. So far as you recall there was no one present other than yourself and Mr. Burke and possibly the employees at your station?

Mr. Hall: Just a minute. The witness said he can't recall anybody but Mr. Burke being present.

The Court: He said the employees.

Mr. Somerville: I have difficulty in hearing Mr. Shirk.

The Court: Speak louder. Who was present on this occasion you are talking about?

The Witness: I don't think we have any specific occasion we are talking about. Just prior to the signing of the lease.

The Court: How long before was it?

The Witness: There were Standard Oil men; sometimes [fol. 766] there was somebody with Mr. Burke, but usually Mr. Burke was alone, I think.

The Court: Go ahead.

By Mr. Somerville:

Q. At any time during that period were any discussions held concerning advances of money or financial inducement for entering into a lease?

A. Yes, there was a lot of discussion on that.

Q. When were those discussions, during what period, and when was the last time?

A. A year prior to the signing of the lease that I now hold, which was September, 1941.

Q. Were those discussions held at your station?

A. Mainly so.

Q. Were some of them held at the offices of the Standard Oil Company?

A. I believe not. I think out to dinner, about one or two.

Q. What offers were made to you by Mr. Burke, during these discussions?

Mr. Burke: I object to that, if the Court please, as calling for the conclusion of the witness.

The Court: You can ask what they talked about, and what was said.

By Mr. Somerville:

Q. What, if anything, was said concerning financial assistance, financial inducements for entering into the [fol. 767] lease.

A. How much enlargement on that can I make?

The Court: First of all, was there anything said about any financial inducement? If you answer in the affirmative you can say what was said. If not, that ends it.

The Witness: The conversations were considerably on the paying of the full amount of the lease at the time that the lease papers were signed.

The Court: What was said?

The Witness: And it seems to be very much out of the ordinary to make a deal of that kind.

The Court: Who said that?

The Witness: The Standard Oil representative, Mr. Burke.

The Court: Who wanted the full amount?

The Witness: I did.

By Mr. Somerville:

Q. What happened?

A. Well, the deal drug——

The Court: You were trying to drive a hard bargain with the Standard Oil?

The Witness: I did the best I could. It took considerable time for them to pay me the full amount of the lease.

By Mr. Somerville:

Q. But they did?

A. They did, yes.

Q. How much did this amount to?

A. $7500.

[fol. 768] Q. For what period was that lease?

A. From the date of the signing of it for 15 years, in advance.

Q. Describe what happened after your agreement with the Standard Oil Company in 1941, with respect to your sales of competitive oils?

A. In the signing of the lease and agreements, it was understood that I was to taper off as fast as possible.

Mr. Hall: Just a minute——

The Court: If an agreement is signed, the agreement is the best evidence. If there was any conversation on it, you had better relate the conversation, and not what you understood what was said.

Mr. Hall: Just a minute. I move to strike out that part of the answer of the witness——

The Court: Yes, that may be stricken. He started to say something. All he said was that it was understood. That may be stricken.

By Mr. Somerville:

Q. Were any instructions given to you with respect to the sale of competitive oils and greases?

A. The main selling—

Q. Yes or no?

A. Yes.

Q. By whom were those instructions given?

A. The instructions were in the lease.

[fol. 769] Q. Did any representative of the Standard Oil Company give you any instructions?

A. It was talked about, yes.

Q. Who was it, Mr. Burke?

A. Mr. Burke.

Q. When?

A. At the time of the signing of the lease.

Q. In November, 1941?

A. No, September was the time of the signing of it.

Q. Where were those instructions given?

A. On the premises, I believe.

Q. Was anybody else present?

A. Not that I recall.

Q. What, if anything, was said with respect to the handling of competitive oils and greases?

A. I should sell our customers on Standard products, and taper off on competitive oils as fast as possible.

Q. What happened with respect to the display of competitive oils during this period?

A. They were not displayed.

Q. What happened with respect to the display of signs out in front, of other signs?

A. They were picked up.

Q. Did you continue to make some purchases of Pennzoil and other competitive oils?

[fol. 770] A. Yes.

Q. Did you continue to make purchases in the same volume as you had prior to this time?

A. No.

Q. From your experience in the service station business, can you tell us whether or not the display you had on hand

of signs and advertisements, the taking of them off had any effect upon your sales of these competitive products?

Mr. Hall: That is objected to. No foundation has been laid, and it calls for speculation and conjecture, and is incompetent, irrelevant and immaterial.

The Court: I am inclined to think that objection is good. I think he can testify to what result the actual change had. Read the question.

(Question read by the reporter.)

The Court: I think it is too broad. I think it really calls for a conclusion. He may be asked after that what the sales were. Then, of course, it is a question of inference whether or not it resulted from removing the signs or not. I will sustain the objection to the form of the question. Did you continue to operate the station yourself?

The Witness: For some time, yes.

The Court: After you entered into this lease, you removed the signs, is that true?

A. Yes.

[fol. 771] The Court: Then you got rid of the stock on hand of these other products?

The Witness: Some of them entirely and some of them I kept on hand.

The Court: Did you sell what you had on hand?

The Witness: I sold what I had on hand. I owned that.

The Court: You bought it?

The Witness: Yes.

The Court: You did not have that on consignment?

The Witness: No.

The Court: Then you ceased buying?

The Witness: On some of them, yes.

The Court: Of course, you did not have any sales, because you did not have anything to sell?

The Witness: On some of them.

By Mr. Somerville:

Q. Approximately when was the last order of Pennzoil placed with Mr. Ellis? I believe you testified that Mr. Ellis was the salesman.

A. It is awfully hard for me to establish a date on that.

Q. I call your attention to——

A. My guess is——

Q. To November, 1944?

Mr. Hall: What is this, a suggestion of the answer to the witness?

[fol. 772] The Court: No, in a case like this you can't be too technical. He probably knows of a particular sale, and he calls his attention to the particular date.

The Witness: I would have said in 1944.

By Mr. Somerville:

Q. Can you place the last sale with respect to any year or month?

A. I think it was in 1944. That would have been my guess.

Q. You don't know what month in 1944?

A. No.

Q. Do you recall sometime during this year a truck driver with a Pennzoil truck appearing at your service station to fill an order that had been placed for Pennzoil?

A. Yes, I do.

Q. Do you recall when this event occurred?

A. It was after the station had been painted as a Chevron station, and I think that was 1944.

Q. Can you place the month, approximately?

A. No, I cannot.

Q. Were there representatives of the Standard Oil Company present when this truck driver appeared at your station?

A. Yes, there was.

Q. Who were those representatives?

A. There were two men, I was told, from the Frisco [fol. 773] office, and Mr. Lewis Burke.

Q. What happened with respect to the order of Pennzoil?

A. I received the order.

Q. Did the truck driver have any difficulty dropping that order with you?

A. I tried my best to place him off the lot, without taking the order in front of the Standard representatives, but he did not take the general hint. It was very funny to all of us, and I said: Go ahead, and leave the order.

Q. Was anything said to you immediately after this episode with respect to handling competitive oils?

A. We joked about it, at the time. I think a day or so later Mr. Burke said, since it has come to the surface this way, I think we had better not buy any more Pennzoil. After all, it's been quite awhile, and you should have been tapered off.

[fol. 774] Q. Did you make regular orders of Pennzoil with Mr. Ellis after that date?

A. I did not.

Q. Did you make any orders to Pennzoil Company at all?

A. I don't remember.

Q. You did not make any regular orders, at any rate?

A. No.

Q. Did Mr. Ellis again approach you with respect to taking orders?

A. Yes.

Q. Were you satisfied with the Pennzoil oil products at this time, Mr. Shirk?

A. Yes.

Mr. Somerville: I think that is all. Just a minute, please. That will be all, Mr. Hall.

The Court: All right. Do you want a recess now or do you want to cross-examine first?

Mr. Hall: It would be a very excellent time.

The Court: It would be a good time. All right; we will recess at a good time.

(Short recess.)

Mr. Somerville: If your Honor please, I would like to ask the witness a particular question or two.

The Court: Where is he?

Mr. Dixon: I will get him, with your Honor's permission.

[fol. 775] The Court: Go ahead. He is probably in the hallway.

By Mr. Somerville:

Q. Mr. Shirk, was it your testimony that you had split pumps at this station prior to its becoming a Standard station?

A. That is right.

Q. During this period that you had split pumps did you ever put gasoline in those pumps other than the gasoline on the brand name on the pumps?

A. No, sir.

Mr. Somerville: That is all.
Mr. Hall: That is all.
The Court: All right.
Mr. Thody: The Government now wishes to call Mr. J. E. Bradley.

J. E. BRADLEY, called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: J. E. Bradley.
The Clerk: Will you speak loudly, please?
The Witness: J. E. Bradley.
The Clerk: And that is B-r-a-d-l-e-y?
The Witness: That is right.
The Clerk: And your full first name, sir?
The Witness: John.

[fol. 776] Direct examination.

By Mr. Thody:

Q. Where do you reside, Mr. Bradley?
A. At 1831 Herbert Avenue, Salt Lake City.
Q. Will you kindly speak up?
A. 1831 Herbert Avenue in Salt Lake City
Q. And what is your occupation or by whom are you employed?
A. Peerless Oil Company. I am manager.
Q. In what business is the Peerless Oil Company engaged?
A. We are distributors for Pennzoil products.
Q. For what territory or sales area?
A. Western Wyoming, Utah and Nevada.
Q. How long have you been associated with the Peerless Oil Company?
A. Three years.
Q. Describe briefly, if you will, Mr. Bradley, what the nature of your duties are as manager of the Peerless Oil Company?
A. Well, sales and the office, the general operation of the company.
Q. What do you mean by sales?
A. Well, I make sales contacts and we have salesmen on the road.

[fol. 777] Q. Are you in charge of these salesmen?

A. Yes.

Q. You referred to office. What do you mean; are you in charge of the operations of the office?

A. That is right.

Q. Do you have any additional duties?

A. Well, just the general operation of the company.

Q. Are you or are you not in charge of the records maintained by the company?

A. Yes.

Q. You are or are not?

A. I am.

Q. Do you do any sales work yourself, personally, Mr. Bradley?

A. Yes. Some of my time is spent on sales.

Q. Is it correct to say occasionally you do?

A. Occasionally, yes.

Q. Describe, if you will generally, Mr. Bradley, the manner in which you order your Pennzoil products for sale in the area described by you.

A. Well, all our orders come through the Los Angeles office. It is all ordered through the Los Angeles office of Pennzoil Company.

Q. You mean you place your orders with Los Angeles?

A. That is correct.

[fol. 778] Q. And from where are the shipments received pursuant to those orders which you have placed on the Los Angeles office?

A. Well, the most of it, the biggest percentage of the oil in Utah comes from Oil City, Pennsylvania, and our Nevada points are serviced from San Francisco and Los Angeles.

Q. With respect to the Utah shipments and for your sales in the State of Utah do you receive all this merchandise from Oil City directly?

A. Well, the biggest percentage of it. You mean is it oil shipped from Oil City?

Q. For sale in Utah do you receive it in one central place?

A. No, no. The biggest percentage is, but we have drop shipments at our different points, and some are to individuals and some are to our subdistributors.

Q. With respect to the sales in the State of Nevada how are shipments of oil from the Los Angeles office made to the various customers you have? Are they handled through some central distribution center or——

A. There are some drop shipments from Los Angeles and some go to our agent who in turn delivers the oil.

Q. What is the situation with respect to greases purchased by you for resale in the States of Nevada and Utah? First, what is the situation with respect to Utah?

A. Well, all our greases are shipped from Los Angeles.

[fol. 779] Q. That is——

A. For Utah.

Q. For Utah? What was the origin of your greases for sale in the State of Utah?

A. Well, Southern Nevada comes out of Los Angeles, and the Reno territory is shipped out of San Francisco.

Q. From your experience in the oil business, Mr. Bradley, is Pennzoil, both the oils and the Pennzoil greases, comparable with brands and prices of motor oil generally used by the motoring public?

A. Yes.

Q. Are Pennzoil products comparable with RPM sold by the Standard Oil Company of California, through the Chevron outlets?

A. Yes.

Q. You have indicated previously in your testimony that you have some salesmen, I believe, is that correct?

A. Yes, we have six salesmen working out of Salt Lake.

Q. What territory do they cover?

A. That is Utah and Nevada.

Q. Both Utah and Nevada?

A. Yes.

Q. What type of sales outlets do you market your products through?

A. Our biggest percentage is through motor car dealers, [fol. 780] service stations and garages.

Q. What is your method of operation? Do the salesmen make contacts of those stations?

A. Yes.

Q. Do they have regular territories?

A. Yes, each salesman has their own territory.

Q. Do you maintain records of the volume of sales for oils and greases made by your company each year in those areas described by you?

A. Yes, sir.

Q. Are those records maintained under your supervision and direction?

A. Yes.

Q. Are they kept in the regular course of business?

A. Right.

Q. Are you familiar, through your examination of those records, or otherwise, as to the volume of your sales in the State of Utah of oils and greases for the year 1946?

A. I have our purchases of oil, that is, our cost, if that is what you want.

Q. Answer yes or no.

A. I haven't those figures available.

Q. Do you know what your dollar volume of oils and greases sold by your company in the States of Utah and Nevada would be for 1946?

[fol. 781] A. 1946 our sales ran $225,000 on just oils and greases.

Q. For both States?

A. Yes.

Q. Do you have comparable figures for the year 1947?

A. '47 was about $20,000 under the 1946 figure.

Q. Less than '46?

A. Right.

Q. Is it your policy, Mr. Bradley, to furnish your dealers with advertising material?

A. Yes.

Q. When is that material furnished, at the time the sales are made, or otherwise?

A. Yes, naturally if they handle our products we furnish the advertisements.

Q. What type of advertisement?

A. Regular curb signs, wall signs; we give away some caps for the mechanics. That is about the only advertising material we have.

Q. Do you furnish display equipment to your customers?

A. To display our products, yes.

Q. Have you, in the course of your business, made sales to the Utah Service, Incorporated, located at Springville, Utah?

A. Yes.

[fol. 782] Mr. Thody: At this point, your Honor, the Government wishes to have marked for identification the dealer agreement TBA, executed by Utah Service, Inc., dated March, 1941, and the accompanying papers in support thereof, which were furnished pursuant to Subpoena No. 1, Item 11.

The Clerk: Government's Exhibit 50 marked for identification.

By Mr. Thody:

Q. Can you tell us, Mr. Bradley, approximately when you made sales to the Utah Service, Inc.?

A. It was in April of 1947.

Q. April, 1947? And to whom did you make those sales?

A. To the manager of the station.

Q. Do you recall his name?

A. No, I don't.

Q. Was the attendant on duty at that time?

A. Well, he was the attendant, but he was also manager of the station.

Q. Do you recall the volume of the order so sold to the station at that time?

A. It was around 10 cases of oil.

Q. Who made the delivery to the station?

A. I was traveling with our salesman at the time. We both delivered the oil.

Q. How was this delivery made? Was it made directly [fol. 783] to the station?

A. Yes.

Q. Was the merchandise displayed?

A. Yes.

Q. Was it placed on the shelves, so that it could be seen visibly?

A. At the time of delivery it was, yes.

Q. Were further sales made by you to this station?

A. No, sir, there was not any more sold, or grease.

Q. Were any further attempts made by you to make future sales?

A. Yes.

Q. What attempts were made by you?

A. Our salesman contacted the station about two weeks later, and he was told that——

Mr. Hall: Just a minute. I move to strike the answer of the witness.

The Court: He just started to say our salesman was, and he did not finish.

Mr. Hall: I object to it as calling for hearsay upon hearsay.

The Court: I don't think the question called for hearsay.

I think the answer would be. The part that he contacted the station is all right, but what he was told, you can't testify to that, because you were not present.

By Mr. Thody:

[fol. 784] Q. Was your salesman successful or unsuccessful?

A. He was unsuccessful.

Q. Were any further attempts made to sell this station?

A. Yes.

Q. When were such attempts made?

A. About 30 days after the first call.

Q. The first call was made when?

A. In April, of 1947.

Q. April?

A. It was in April.

Q. I think your previous testimony, if I am not mistaken, was in February, 1947.

A. I thought I said April.

Q. Would you correct the record at this time?

A. It was April.

Q. April, 1947?

A. Yes.

Q. A subsequent attempt was made 30 days later, is that correct?

A. That is correct.

Q. By whom?

A. I contacted them on the last call.

Q. Were you successful at that time, or unsuccessful?

A. I was unsuccessful.

[fol. 785] Q. Were there any conversations as to the reason why you were unsuccessful in making the sales of Pennzoil at that time?

A. Yes.

Q. Who was present when such conversations took place?

A. Myself and the station manager.

Q. When was this?

A. That would be in May.

Q. May, 1947?

A. 1947.

Q. Where did these conversations transpire?

A. In the station, in the manager's office.

Q. In the building?

A. In the building.

Q. What was the nature of those conversations?

Mr. Hall: Objected to

By Mr. Thody:

Q. What were those conversations?

Mr. Hall: That is objected to as calling for hearsay.

The Court: I will overrule it, in line with the ruling I made this morning. Objection overruled.

The Witness: I was in, naturally trying to sell him our merchandise, our products. I was told that they could not handle any outside oils.

By Mr. Thody:

Q. You were told you could not handle——

The Court: Don't repeat the answer. Mr. Hall did that [fol. 786] too. It is very bad for the record, because the witness does not understand whether it is calling for another question, and the reporter does not know whether you are just soliloquizing, and whether it should go in or not.

Mr. Thody: Very well.

The Court: It is hard to get away from it, even with lawyers who have practiced as long as you have.

Mr. Thody: I move now, your Honor, that Government's Exhibit for identification No. 50 be admitted into evidence.

The Court: Is that of a similar type?

Mr. Thody: Yes.

The Court: Is that a TBA agreement?

Mr. Thody: A dealer agreement.

Mr. Hall: I object as irrelevant and immaterial.

The Court: Objection overruled.

The Clerk: 50 in evidence.

By Mr. Thody:

Q. Have you made sales, Mr. Bradley, to Fred A. Carleson, located at 535 South Main Street, Salt Lake City, Utah?

A. Yes, sir.

Q. Are you acquainted with the type of business operated by Mr. Carleson?

A. Yes.

Q. Will you describe the type of business to the Court, please?

[fol. 787] A. It is a motor car dealer, that is a distributor for Cadillac and Pontiac for the State of Utah.

Mr. Thody: I now ask your Honor, that the dealer agreement TBA, executed by the Fred A. Carleson Company on June 7, 1944, and the supporting papers attached thereto, be marked Government's Exhibit for identification.

The Clerk: Government's Exhibit 51 for identification.

Mr. Thody: May the record show, your Honor, that this agreement was produced pursuant to Subpoena No. 1, Item 12?

The Court: All right.

By Mr. Thody:

Q. Do you maintain records of each individual account to which you have sold your products?

A. Yes.

Q. Do you have an account for the name Fred A. Carleson?

A. Yes.

Q. Have you examined such account?

A. Yes, I have.

Q. Can you state to the Court when you first made sales to Fred A. Carleson Company?

A. Well, as far as the record indicates, 1934. That is as far back as it shows sales to Fred A. Carlson Company.

[fol. 788] Q. Do your records generally go back beyond that period?

A. No; we haven't records beyond 1934. Those are the——

Q. So that your records do not necessarily show, or sales might have been made prior to that time?

A. Prior to that, yes.

Q. Have you examined your records on the amount of sales made to the Fred A. Carleson Company prior to the date June 7, 1944?

A. Yes.

Q. Can you state the amount of oils and greases sold to Pennzoil for the year 1943?

Mr. Hall: Now, just a minute. That is evidently calling for the contents of a record, your Honor. We have not seen the record. I object to it as not the best evidence.

The Court: Well, if he has a summary, or unless you know it yourself, unless he has knowledge, he can't testify.

By Mr. Thody:

Q. Do you have knowledge?

A. Yes.

The Court: All right; go ahead.

By Mr. Thody:

Q. Can you state what the volume of sales in the year 1943 to Fred A. Carleson Company were?

A. Right in the neighborhood of $2,000.

Q. Is that for the total year?

[fol. 789] A. Yes.

Q. And for the year 1944 do you have knowledge?

A. Yes.

Q. What is the amount of sales?

A. It was approximately $1,300.

Q. Now, does that $1,300 represent the first six months up to June 7th or does that represent the entire year?

A. That is the entire year of '44.

Q. Now, do you have knowledge of the volume of sales made in the year 1945?

A. Yes.

Q. What is it?

A. It was $135.00.

Q. And for the year 1946?

A. Just about exactly the same.

Q. And what is that amount?

A. There was $133.00. There was just two or three dollars difference in the two years.

Mr. Thody: I now move that Government's Exhibit 51 for identification be admitted into evidence.

Mr. Hall: Objection is made to each and every document included in that exhibit on the ground that it is irrelevant and immaterial.

The Court: The objection is overruled and it may be received into evidence and be so marked.

[fol. 790] The Clerk: 51 in evidence.

Mr. Thody: At this time, your Honor, I wish to call the attention of the witness and also the attention of the court to paragraph 3(a) which has been added to the dealer agreement executed June 7, 1944. This short provision reads:

> "In addition to the sale of Company's lubricating oils on the premises described herein, the sale of Quaker State and Pennzoil Motor Oil by Dealer thereon shall not be deemed by Company to be a breach of this Agreement provided such sale does not constitute more than five per cent of total lubricating oil sales on the premises."

Q. Were you aware of the fact that there was a percentage limitation in the contract?

A. I knew there was a percentage but I didn't realize it was five per cent.

Q. Have you had any conversations with officers of Fred A. Carleson Company concerning this percentage?

A. Yes.

Q. When were such conversations had?

A. Oh, about in February of this year I had quite a discussion with Mr. Harry——

Q. And whose was that conversation?

A. In Mr. Carleson's office.

Q. And who was present?

[fol. 791] A. Harry Carleson and myself.

Q. Who is Harry Carleson?

A. He is manager of the Fred A. Carleson Company.

Q. And what was the conversation that was held concerning the percentage?

Mr. Hall: Just a minute, just a minute. That is objected to as irrelevant and immaterial, no proper foundation laid, hearsay, and not within the issues of the case.

The Court: A better foundation should be laid, but the objection as to materiality is overruled in line with the similar ruling I made this morning on similar questions.

By Mr. Thody:

Q. Approximately when were such conversations held?

A. In February of this year.

Q. Approximately when in February?

A. Oh, in the middle, right in the middle of the month of February. I just couldn't say for sure which day.

Q. Well, was it closer to the 20th or was it closer to the 10th?

A. Oh, it was around the 15th.

Q. The 15th. You say that the conversations were held at the Fred A. Carleson Company?

A. Yes.

Q. Where at the Fred A. Carleson Company, in its office?

[fol. 792] A. In Mr. Harry Carleson's office.

Q. In his office?

A. Right.

Q. Where is that located?

A. 535 South Main Street in Salt Lake.

Q. Is that on the ground floor or where?

A. Yes. It is a one-story building.

Q. And what parties were present?

A. Just Mr. Carleson and myself.

Q. What were the conversations that were so held?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. Oh, I was in to try to see if we couldn't get more of their oil business; and I was told that we wouldn't be able to enjoy any better business until their contract had ran out with the Standard Oil Company.

By Mr. Thody:

Q. Was this percentage provision specifically mentioned?

A. He didn't mention any amount but he did tell me that as soon as their volume got up—they had a certain quota to meet—and as soon as that was sold, well, then he would be in a position to buy what he wanted.

Q. I think maybe you are discussing another provision in this contract also. Did you ever discuss the provision as to a gallonage amount which Fred A. Carleson should [fol. 793] buy, a gallonage amount of oil and greases which the Fred A. Carleson Company must buy from the Standard Oil Company?

A. Well, he said he had a certain amount he had to buy. I don't know what it was.

Q. Well, answer yes or no. I would like a yes or no response. Did you have such conversation?

A. Yes.

Q. And when did that transpire?

A. That is at the same time.

Q. At the same time. Will you tell the court the full nature of the conversations with respect to it?

A. Well, he just told me that it would be better not to use any of our products because he had a certain volume that he had to sell before his contract would be completed.

Q. Did he tell you what that volume was?

A. No.

Q. Were you aware at that time that that volume was for 20,000 gallons of lubricating oils and greases?

A. No.

Q. Based, Mr. Bradley, upon the 1943 sales volume which you have referred to, I believe your testimony, if I am not mistaken, was around $2,000, is that correct?

A. Yes.

Q. Do you know the amount, the volume of oils embraced within that sales volume?

[fol. 794] A. It was approximately 1,600 gallons of oil.

Q. 1,600 gallons.

A. The balance would be in greases. I haven't how much grease was sold.

Q. Did you ever have any other further conversations with the Carlesons concerning the differences in the volume over the 1943 level and the subsequent volume which you enjoyed?

A. Several times.

Q. And when did those conversations transpire?

A. Oh, I talked with him several times in 1946, and my first contact was right after I started with the company.

Q. When was that?

A. In about September of 1945.

Q. Have you had any current conversations?

A. Yes.

Q. When was the last conversation of this nature you had with them?

A. It was about February.

Q. And where did that occur?

A. That was at Mr. Carleson's office.

Q. Was that at the same time?

A. At the same time; yes.

Q. And what was the conversation? That is, the same as this previous conversation, the same time, place, and [fol. 795] parties present as the February 15th?

A. That is right.

Q. And what was stated there?
A. I was talking about February 15th——

Mr. Hall: Wait a minute, just a minute, Mr. Bradley. That is objected to as hearsay.

The Court: Overruled.

By Mr. Thody:

Q. What explanation or what reason was given as to the difference in volume which you now enjoy and the previous volume?

A. Well, he just said he had to sell a certain percentage of Standard oil products and that he had to make the quota. That has been the same reason every time I talked with Mr. Carleson, the reason of our drop in volume.

Q. You have persisted in attempting to make sales?
A. Yes.

Q. Was there any further conversation at that time?

A. Well, one reason that we have been contacting, we have been more or less assured that when the contract does run out that we will be able to enjoy a much better volume there.

Q. Did he express a dissatisfaction with the present contract he had?

A. Yes; he did.

Q. What was the nature of this dissatisfaction? Was it directed to the limitation on oil?

[fol. 796] Mr. Hall: Just a minute, just a minute. That is objected to as hearsay.

The Court: I think you should not lead him. He ought to say what it was. I will sustain the objection to that.

By Mr. Thody:

Q. Was the dissatisfaction with the oil provisions of the contract?

A. Yes.

Q. And what was stated at that time?
A. He just said——

Mr. Hall: Wait a minute. That is objected to as hearsay.

The Court: All right. Overruled. You may answer.

Mr. Thody: Yes.

A. He just said it would be good when it was over with and he could buy what he wanted to. That is the sum and substance.

Q. Was there ever any dissatisfaction expressed to you by the Carleson Motor Company concerning Pennzoil products?

A. No.

Mr. Thody: That is all.

The Court: All right. Cross-examine.

Cross-examination.

By Mr. Hall:

Q. Where do you live, Mr. Bradley?

A. 1831 Herbert Avenue in Salt Lake.

Q. Salt Lake City in the State of Utah?

[fol. 797] A. In the State of Utah, yes.

Q. What is the dispensing equipment that Pennzoil furnishes to retail dealers?

A. The highboys to dispense our own products or the 15-gallon seals and some grease dispensers, gear grease.

Q. What is a highboy?

A. Well, it is a 30-gallon container, steel container, with a pump. It is either 30 or 60-gallon.

Q. Did I understand you to say that you started with the Pennzoil Company in 1945?

A. Yes.

Q. Well, is it a fact that you had not been connected with that company before 1945?

A. That's right.

Q. How many salesmen did you say operated out of the Salt Lake office?

A. Six.

Q. That was during last year, was it?

A. I had five last year. I have six this year.

Q. How many did you have in 1946?

A. There were five men at that time.

Q. And before that how many were there?

A. The same amount since I had been out there.

Q. What other brands of lubricating oils compete with Pennzoil in your area, that is in Utah and Nevada?

[fol. 798] A. Oh, there is Quaker State, Veedol, all your Associated oil products, and you have Standard or Chevron.

and MacMillan, Triton in some parts of the state—that is Union—and there might be other brands that I just can't think of at the moment.

Q. Quaker State?

A. I named Quaker State, I thought.

Q. Hyvis?

A. Yes, Hyvis is there, and now Phillips Petroleum which has just been in a short time.

Q. That has just been in a short time?

A. That is right.

Q. Does the Continental Oil Company put out lubricating oil?

A. Oh, yes; Continental Oil, Texas Company. There are several other independent companies that I just don't recall at the moment.

Q. You don't recall their names?

A. Not right at the moment.

Q. At the time attempt was made to sell the Utah Service, Incorporated in April, 1947 what brands of lubricating oils was the Utah Service selling at that time?

A. All Standard Oil products, as I recall.

Q. What other lubricating oils?

A. I don't believe they had any other oils in stock [fol. 799] at the time.

Q. Well, did you make an investigation to determine that fact?

[fol. 800] A. No; I couldn't say for sure whether he had any others at that time or not.

Q. How much Pennzoil did Carleson of Salt Lake take in 1947?

A. I would say around 200 or 300 gallons. I wouldn't be sure of that. I would have to check the records. It has been a small amount right through the last three years.

Mr. Hall: That is all.

Mr. Thody: One further question, Mr. Bradley.

Redirect examination.

By Mr. Thody:

Q. With respect to your testimony on sales to Utah Service you testified, did you not, at the time the initial sale was made in April, 1947 that the Pennzoil products were displayed in a prominent place, is that correct?

A. Yes.

Q. When you returned 30 days later did that same situation prevail?

A. No.

Q. What was the situation at that time?

A. Well, they had been told that they couldn't display—

Q. No, no; just the situation.

A. It had been moved to the back room.

Q. Was it concealed?

[fol. 801] A. Yes.

Mr. Thody: That is all.

Mr. Somerville: The Government calls as its next witness Mr. Shidemantle.

Andrew J. Shidemantle, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Andrew J. Shidemantle.

The Clerk: How do you spell your last name, please?

The Witness: S-h-i-d-e-m-a-n-t-l-e.

Mr. Hall: Will you speak up so I can write it down.

The Clerk: It is Andrew J. and he is now spelling the last name.

The Witness. Shidemantle, S-h-i-d-e-m-a-n-t-l-e.

Direct examination.

By Mr. Somerville:

Q. What is your residence address, Mr. Shidemantle?

A. 7220 Roanoke Road, San Marino.

Q. What is your business or how are you employed?

A. Vice-president and general manager of the Quaker State Oil Refining Company of California.

Q. And what is the business of that company?

A. The purchase and marketing of Quaker State motor oils and greases.

[fol. 802] The Court: Is that the same company of which Mr. John Beman is president?

The Witness: No. He is with the Pennzoil.

The Court: Oh, that is Pennzoil. All right.

By Mr. Somerville:

Q. From what sources do you receive your lubricating oils?

A. Our lubricating oils all come from one of four refineries, all of which are located in the Pennsylvania field.

Q. And from what sources do you receive your greases?

A. The greases come from the same four sources and an additional source. What we refer to as our solid greases are all made at our plant in Buffalo, New York.

Q. Does your company have any relationship to the producer in Pennsylvania on the lubricating oils?

A. Well, our company produced some crude oils, if that is what I understand.

Q. Do you know whether or not there is any stock relationship between the Pennsylvania producer and the Quaker State Company of California, if you know?

A. Well, the Quaker State Oil Refining Company of California does not produce any oil, but the company from whom we receive our lubricating oils does produce some crude oil.

Q. Does that company own the stock in your company?

[fol. 803] A. That is right.

Mr. Hall: Now, wait a minute.

By Mr. Somerville:

Q. If you know? Do you know that as a fact?

A. Yes; I do.

Mr. Hall: Just a minute, please. Let me make an objection. I do not know what company you are talking about. You say "that company" and you may refer to either an eastern or a western company.

Mr. Somerville: I am sorry, Mr. Hall. But did you testify as to the company from whom you receive your shipments of oil?

A. I don't believe I did. That is the Quaker State Oil Refining Corporation of Oil City, Pennsylvania.

Q. And your company is a subsidiary of that company?

A. My company is a totally owned subsidiary of the eastern company.

Q. Does your company do any blending of oils received from the fields in Pennsylvania?

A. We do not.

Q. What is the area under the jurisdiction of your companies, Mr. Shidemantle?

A. We serve the State of California, western Nevada and southern Oregon. If I may say, that is within the territorial boundaries of the United States and I don't [fol. 804] suppose you are interested outside of that.

Q. That is right. With respect to the territory you have just described how are Quaker State oils and greases distributed?

A. Well, they are distributed—we distribute them in two different ways. We have our own direct distribution in Los Angeles County, and in a certain area around Sacramento involving 14 counties. All of the rest is distributed by distributors.

Q. Are you familiar with the trade those distributors sell their products to? First—let me withdraw that question. Do you have any supervisory functions over distributors?

A. Myself?

Q. Your company.

A. Our company. Yes; we supervise the operation of our distributors through our own men in the field who spend all their time with the distributors and working with their men, soliciting orders from the trade.

Q. Your company does joint sales promotional work with the distributors?

A. That is right.

Q. And does your company do joint advertising work with those distributors?

A. Yes; I suppose you would call it joint, but in the [fol. 805] main our advertising is done by ourselves. Whatever advertising they do is generally done by themselves.

Q. And did your company have any supervisory functions over the distributors in the State of Washington?

A. Yes, we did.

Q. Are you familiar with the source from which their oils are received?

A. Yes, they are received from exactly the same source as the Quaker State Oil Refining Company of California receives them, from any one of the four refineries located in the Pennsylvania field, one of which is at Bradford, Pennsylvania, one at Oil City, Pennsylvania, one at Embenton, Pennsylvania, and one at St. Mary's, West Virginia. Then, of course, the greases come from the same source, either

from one of those four refineries, or from our plant at Buffalo, New York.

Q. Does your company solicit accounts with service station dealers and garage dealers?

A. Yes, we do.

Q. That would be directly in the Sacramento areas and the Los Angeles areas?

A. That's right.

Q. Are you familiar with the trade solicited by your distributors?

A. Yes.

[fol. 806] Q. What trade is that?

A. Service stations, garages, car dealers, in the main, and some commercial business.

Q. How many salesmen, direct company salesmen, are employed by your company in soliciting this trade?

A. About 15.

Q. Are their sales efforts confined also to Los Angeles and Sacramento?

A. About 12 of them are confined to our own direct operations. The other three are in distributor territories.

Q. Are you familiar with whether or not they solicit the Chevron service station trade?

A. I think they do.

Q. And they still do so?

A. That's right.

Q. Are you familiar with the records of sales of this class of trade by your company?

A. Roughly.

Q. Are sales made to Chevron dealers?

A. Well, I would have to say I am sure it is a very, very small amount, if so.

Q. But an effort has been made over a period of some time?

A. Yes.

Q. To solicit that trade?

[fol. 807] A. That's right.

Q. Are you familiar with the grades, brands, qualities of oil bought and sold generally to the motoring public, including those oils dispensed and sold by the Standard Oil Company of California?

A. Yes, sir.

Q. Are those oils and greases comparable to Quaker State oils and greases?

A. Yes.

Q. With respect to the movement or flow of your product, is it frequent, constant, or what is the nature of it, Mr. Shidemantle?

Mr. Hall: That is objected to as calling for the conclusion of the witness; to general, and calling for speculation and conjecture.

The Court: I think it does.

Mr. Somerville: I will reframe that, your Honor.

The Court: All right.

By Mr. Somerville:

Q. Does your company receive shipments directly from Oil City, Pennsylvania, regularly?

A. Yes, sir.

Q. How often does it receive shipments?

A. We have merchandise coming to us all the time.

Q. Are those shipments made pursuant to orders placed?

A. Those shipments are made as a result of the orders [fol. 808] we ourselves have taken in our own territories from the dealers, or as the result of the orders that have been taken by our distributors, and forwarded by us to place with the refinery.

Q. With respect to distributors in the States of California, Oregon and Washington, are all orders placed with you?

A. No, just from those sections—all orders acquired in the State of California, Western Nevada, Southern Oregon, and a small section of Washington, are placed through us. We receive those orders, and in turn forward them to the refinery. The other section of Oregon and Washington, and at this time I might qualify that section: it is that section which lies only west of the Cascade Mountains in Washington and Oregon. Those orders are placed directly with the refinery by the distributors up there?

Q. Are those shipments received directly from the refinery in Pennsylvania?

A. All orders shipped from the refinery to distributors go direct to the distributor.

Q. Are you familiar with the distributors in the States of Utah, Idaho and Arizona with respect to your product?

A. Well, I simply know the names, you might say, of the distributors who cover the majority of those States.

[fol. 809] Q. Do those distributors receive their shipments directly from Pennsylvania?

A. They do.

Q. Through whom do they place their orders?

A. They place their orders directly with the home office of the Quaker State Oil Refining Corporation, at Oil City, Pennsylvania.

Q. Do any of your distributors handle Quaker State Oil on consignment from the producer in Pennsylvania?

A. No. From the producer in Pennsylvania? No, none of the distributors to whom the Quaker State Oil Refining Company of California sell receive any consignment from the Quaker State Oil Refining Corporation. I cannot answer that question as to what the distributors who deal directly with the Eastern company do. I cannot answer for them.

Q. Do any distributors under your jurisdiction have stocks under consignment from you?

A. Two.

Mr. Somerville: That is all.

Cross-examination.

By Mr. Hall:

Q. Is this a fair statement of the situation, that the company that you are connected with obtains from its parent company in Pennsylvania all of the products that it, the California Company, distributes?

[fol. 810] A. Yes.

Q. That would be true whether the products are distributed directly or through distributors?

A. That's right.

Q. I think you said that your California Company was a wholly owned subsidiary of the Pennsylvania Company?

A. That's right.

Q. Do those distributors that distribute the products in Idaho and Utah come under your company, or under the parent company?

A. They come under the parent company.

Q. In fact, all distributors outside of California or Western Nevada and Southern Oregon, would come under the parent company instead of your company, is that right?

A. With the exception of one in Bellingham, Washington.

Q. Are you familiar with the annual report, 1947, of the Quaker State Oil Refining Corporation?

A. Well, to the extent that I have seen it.

Q. You have read it?

A. Not very thoroughly.

Q. By the way, this Quaker State Oil Refining Corporation is the parent company of the company you are connected with, is that right?

A. That's right.

Q. I don't need to put this in evidence, unless counsel [fol. 811] request it, but if you want it in evidence, I will put it in. But I want to read to you a paragraph from the statement of H. J. Crawford, president—by the way, do you know him?

A. Yes.

Q. I want to read to you this statement, and then I will put the question: Since Quaker State motor oil and lubricants are sold almost entirely through independent distributors, the corporation is keenly interested in the prosperity of its distributor organization. The usual sales aids are continued. Although the corporation was unable to supply the demand, sufficient oil was available to enable its distributor organization to carry on a profitable operation. When the present high level of business activity declines, and competition becomes keener, Quaker State motor oil, with its nation wide distribution, and the widespread acceptance it enjoys, will retain its share of the market.—[fol. 812] My question to you is this: From your experience, and based upon your experience, do you agree with that statement of President Crawford?

A. I would like to hear that read again in its entirety.

Q. I will place it before you so that you can read it yourself.

The Court: Let him look at it.

Mr. Hall: I am handing it to him.

Mr. Somerville: I object to the question as irrelevant and immaterial.

The Court: No, he wants to see if the method of operation described coincides with his understanding of the method of operation.

Mr. Somerville: I object to the way the question is framed.

The Court: Ordinarily we don't allow comparative testi-

mony, but Mr. Hall is putting it in as though he were asking an expert if he agrees with such a statement.

Mr. Somerville: I don't object to all that is in that paragraph, but I do object to some.

The Court: All right.

The Witness: I am still a little confused on the question. I will endeavor to answer that if you will ask me your part of the question again.

[fol. 813] Mr. Hall: Yes, will the reporter read him my part of the question where I began with the words: My question to you is this:

(Question read by the reporter.)

A. It says here that Quaker State will retain its share of the market. I think that is nothing other than what anybody in business would say in a report, if everything was equal, which it probably is.

Q. When your Quaker State oil is distributed to dealers, is it distributed in cans, or in bulk, or by both methods?

A. By both methods.

Q. What is the advantage of the distribution in cans, if any?

A. Well, they have both advantages and disadvantages.

Q. What are some of the advantages?

A. The advantages are that the dealer can—of course, the conception of the can in the beginning was to let the customer know he had sealed oil. Some of the other advantages occurring to the dealer are that he can purchase in small quantities—some of the smaller dealers. The disadvantages to the distributor are that it is a more costly method of distributing oil.

Q. In mentioning the advantages you said, if I understood you correctly, that it let the customer see what he [fol. 814] was buying, is that correct?

A. That is one advantage I believe.

Q. In other words, there is that advantage to canned oil generally that it avoids the possibility of substitution?

A. Yes.

Q. That is correct, isn't it?

A. That is right.

Q. Can you tell me how many retail outlets in the States of California, Oregon, Washington, Nevada, Utah, Arizona and Idaho sell Quaker State lubricating oils or greases?

A. Well, of course, having no jurisdiction over Utah and Idaho, if you eliminate that part I would have some idea there, and, of course, operating through distributors we have no record of how many dealers they sell, so I cannot answer that question.

Q. In your particular territory, that is, California, western Nevada and southern Oregon, can you give us any figure as to the number of retail outlets handling your products?

A. The only thing I can say is that we have a fair idea of what we have in our own directly operated territory.

Q. Isn't that territory I have just described your direct operating territory?

A. You mentioned all of California and Nevada, I [fol. 815] believe?

Q. Yes.

A. We don't refer to that as our direct operated territory. That is a little bit confusing. When you refer to it as our direct operated territory, that is where our salesmen solicit the outlet, and make deliveries and bill him.

Q. What is the direct operated territory?

A. That is Los Angeles County, and 14 counties surrounding Sacramento.

Q. In this direct operated territory in how many retail outlets are Quaker State products sold?

A. Roughly between 4,000 and 5,000.

Mr. Hall: That is all.

Redirect examination.

By Mr. Somerville:

Q. Is your company trying to develop new business, as well as retain its old business, Mr. Shidemantle?

A. We do.

Q. Would you retain your sales market if all of the outlets were required to buy all of their requirements from a particular oil company?

Mr. Hall: That is objected to as argumentative.

The Court: He is still your witness. The answer is either obvious, in which case it is improper, or it calls for a conclusion, in which case it also is improper. I will sustain [fol. 816] the objection.

Mr. Somerville: I think that will be all.

The Court: Gentlemen, we have done very well, and so you may have information in advance, I find, on looking at my calendar, that fortunately the calendar for Monday is very light. There are only three matters. One is a motion to dismiss, which has been very carefully briefed, and which should not take very long. The other matters are formal matters, the presentation of a judgment, and the other is merely a setting. Really, the only object of the continuance is to allow a substitution of attorneys. The attorney in the case has stated to the court that he had given his client a substitution, but it evidently is in his pocket, and has never gotten in to the files. I want to have an attorney to deal with, having learned by long experience that a person in pro per gives too much trouble. I am quite certain, gentlemen, that it should not take over half an hour, so we can put in the full morning if you will come in at 10:30. I am sure that by that time I will have the other matters out of the way, and so I give you this notice now so that you will make arrangements in regard to witnesses.

Mr. Dixon: I appreciate that.

Mr. Somerville: May we take certain of the documents out of the court room, your Honor?

The Court: The clerk is authorized to let either side [fol. 817-818] have any documents they wish, for the purpose of making photostats, or further copies.

(Whereupon, at 5:00 o'clock p. m., an adjournment was taken until 10:00 o'clock a. m., of the following day, Thursday, May 13, 1948.)

[fols. 819-820] IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Leon R. Yankwich, Judge Presiding

No. 6159-Y Civil

UNITED STATES OF AMERICA, Plaintiff

vs.

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., Defendants

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Thursday, May 13, 1948

APPEARANCES:

(As heretofore noted.)

[fol. 821] Los Angeles, California, Thursday, May 13, 1948, 10:00 A. M.

The Clerk: 6159 Civil, U. S. vs. Standard Oil. Further trial.

The Clerk: Call your witness.

Mr. Thody: The Government calls as its next witness Mr. C. J. Estes.

C. J. ESTES, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Clarence J. Estes.

Direct examination.

By Mr. Thody:

Q. Where do you reside?

A. 204 La Espiral, Orinda.

Q. California?

A. Yes.

Q. What is your business or occupation, Mr. Estes?

A. Quaker State Oil distributor.

Q. What is the firm name?

A. C. J. Estes Company.

Q. How long have you served as a Quaker State distributor?

A. A little over four years.

[fol. 822] Q. What was your previous business, before that?

A. Industrial salesman for Quaker State Oil of California.

Q. What was the sales territory represented by you in the sale of Quaker State?

A. Six counties in the San Francisco Bay area.

Q. Name the counties.

A. Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara and Santa Cruz.

Q. In the operation of the C. J. Estes Company, what is your particular function?

A. Manager and sales work.

Q. Do you handle the ordering of Quaker State products?

A. Yes.

Q. Will you describe to the Court, if you please, Mr. Estes, the manner in which you order your oils and greases for sale in the territory you have described?

A. We place our order to the Quaker State Oil Company of California, at Los Angeles, who transfers the order to Oil City, Pennsylvania for shipment.

Q. From whom do you receive the shipment of oils and greases?

A. Quaker State Refining Corporation, Oil City, Pennsylvania.

Q. Is the Los Angeles office that you refer to the office in [fol. 823] which Mr. Andrew Shidemantle is the manager?

A. That's right.

Q. How is this oil transported from Oil City, Pennsylvania?

A. Both by boat and rail.

Q. And sent directly to you?

A. That's right.

Q. Is Quaker State motor oil generally comparable with other brands and classes of motor oil used by the motoring public?

A. Yes.

Q. Is Quaker State comparable with RPM motor oil as sold by the Standard Oil of California, through Chevron outlets?

A. I would say so.

Q. In marketing Quaker State products in these counties you have described, what method do you employ?

A. First we send our salesmen out to solicit business for us, and following that we make deliveries by our own trucks.

Q. What type or class of outlets do you generally market these products through?

A. Service stations, garages, motor car dealers.

Q. You have mentioned some salesmen that you have. How many salesmen?

[fol. 824] A. Four.

Q. Is that the present number?

A. That is the present number.

Q. How many did you have in 1947?

A. Three.

Q. Do you give these salesmen any instructions as to the type of account or type of dealers they are to contact?

A. No; wherever they can get the business.

Q. Do they or do they not have complete freedom in the solicitation of their customers?

A. They do.

Q. They do have?

A. Yes.

[fol. 825] Q. Do you furnish your customers with advertising?

A. Oh, yes.

Q. What is the major outlet?

A. Well, mailing out literature, curb signs, can racks, highboys.

Q. Well, do you also furnish them with equipment to dispense your merchandise?

A. In some cases.

Q. And what is the nature of that equipment?

A. Highboys, seal containers, small seal containers.

Q. Do you do any sales contact work yourself personally?

A. Yes.

Q. Approximately how much of your time do you spend in that?

A. Oh, I would say 60 per cent.

Q. Have you contacted a station located at 2546 Telegraph Avenue in Berkeley, California?

A. Yes.

Mr. Thody: The Government now wishes to have marked for identification sublease and agreement dated November 15, 1944, and a dealer agreement dated November 15, 1944 for the station located at 2546 Telegraph Avenue, Berkeley, California.

The Clerk: It is Government's 52 for identification.

Mr. Thody: May the record also show, your Honor, that this agreement was produced by the defendants in response to subpoena No. 1, paragraph 1, item 15?

[fol. 826] The Court: All right.

By Mr. Thody:

Q. Did you make sales to this station?

A. Yes.

Q. When did you make sales?

A. In the early part of 1944.

Q. Approximately when?

A. I would say in February or March.

Q. Do you recall to whom you made such sales?

A. I do not. In the earlier part we sold it as the Dana Garage and we solicited orders from most anybody that was there on the premises.

Q. When you speak of the Dana Garage was that the garage, the designation of the station at this location at 2546 Telegraph Avenue?

A. That is right.

Q. Do you recall whether such merchandise sold by you was prominently displayed?

A. It was at the beginning.

Q. How much merchandise did you sell at this time?

A. The opening order was 30 gallons.

Q. 30 gallons?

A. Six cases.

Q. Did you make any subsequent sales?

A. Yes.

Q. When?

A. It was just about a monthly order, 30 gallons a month.

Q. For what period of time?

[fol. 827] A. Up until November.

Q. November when?

A. 1944.

Q. Did you make any sales after November, 1944?

A. One.

Q. When was this?

A. It was along in the first week or second week in November.

Q. Of what year?

A. '44.

Q. Did you make any subsequent attempts to make further sales?

A. Yes.

Q. When?

A. Oh, in probably the rest of the year, the next two or three months.

Q. Were you successful?

A. No.

Q. Did you talk to anyone relative to the reasons for your failure to make such subsequent sales?

A. Yes.

Q. To whom did you talk?

A. Mr. Thillman.

Q. And who is Mr. Thillman?

A. He is the Chevron dealer.

Q. And when did you talk to him?

A. From November, sometime in November on until I quit calling.

[fol. 828] Q. When was the last time you talked with him?

A. I would say it was around in January sometime.

Q. January of '45?

A. '45.

Q. Can you fix a date? Can you fix the approximate date in January when you talked to him?

A. Oh, I would say around the middle of January.

Q. Around the middle. And where did this conversation take place?

A. In the office or accessory room.

Q. Of his station?

A. That is right, garage.

Q. What were these conversations?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. Regarding why we could not secure any more business from him.

By Mr. Thody:

Q. What was the reason given?

A. Well, the reason given was that he had signed up on a Chevron deal and couldn't buy our product any longer.

Q. Did you make any subsequent attempts to sell your product after this?

A. That is right.

Q. You did?

A. Yes.

[fol. 829] Q. Were you successful or unsuccessful?

A. No. No; unsuccessful.

Q. Have you made any further contacts in attempts to sell Chevron stations?

A. Yes.

Q. Have you sold or attempted to sell the Union Square Garage in San Francisco?

A. Yes.

Mr. Thody: At this time, your Honor, the Government moves that Government's Exhibit 52 for identification be admitted into evidence.

Mr. Hall: Defendants object to each and all of the documents so offered on the grounds they are irrelevant and immaterial.

The Court: Are they of the similar type? Is that the dealer agreement?

Mr. Thody: That is the dealer agreement; yes, sir

The Court: And a sublease. Overruled.

The Clerk: 52 in evidence.

Mr. Thody: And the Government also wishes to have marked for Government's identification the distributor agreement dated February 21, 1941, with the Union Square Garage, and the letters referring thereto, and wishes to have marked as a further exhibit——

The Clerk: Government's 53 marked for identification.

[fol. 830] Mr. Thody: —and 53-A, the agreement entitled "Garage Management and Occupancy Agreement," executed between Standard Oil Company and the Union Square Garage.

The Clerk: 53-A marked for identification.

By Mr. Thody:

Q. Referring back for just——

Mr. Hall: Pardon me one moment. I beg your pardon.

By Mr. Thody:

Q. Referring back for just one moment to your testimony relating to Dana's Garage, on your subsequent visits after November, 1944 was your merchandise prominently displayed?

A. No.

Q. How was it?

A. It was kept in the back room, storage room.

Q. Was the back storage room part of the same building?

A. That is right.

Q. When did you attempt to sell the Union Square Garage in San Francisco?

A. Either May or June in 1946.

Q. Are you acquainted with the general location of the Union Square Garage in San Francisco?

A. Yes.

Q. Will you describe generally where it is located with reference to the metropolitan business district of San Francisco?

A. Well, it is located in the center of the downtown sec-
[fol. 831] tion near the finest hotels, I would say.

Q. Is this a relatively large garage or a relatively small garage?

A. It is the largest one in San Francisco.

Q. To whom did you talk in making your attempted sales of your products at the Union Square Garage?

A. Mr. Pansini.

Q. And who is Mr. Pansini?

A. He is the son of the owner of the garage.

Q. Do you know what position he occupies?

A. He is the manager of that, of the Union Square Garage.

The Court: May I ask one or two questions? That garage is built on city property, is it not?

The Witness: I am not sure of that.

[fol. 832] The Court: That is in the square?

The Witness: Yes, Union Square.

The Court: In Union Square, which is over in the center, with the St. Francis Hotel on one side?

The Witness: That's right.

The Court: In that area, and on top of it is a ——

The Witness: —park.

The Court: There is a park, like Pershing Square?

The Witness: Yes.

The Court: This is right in it?

The Witness: Yes.

By Mr. Thody:

Q. Were any representations made concerning your products at that time?

A. In a natural solicitation of trying to get our product in the garage, yes.

Q. Will you describe just what those representations were?

A. Our presentation was along the line of this being one of the main down town parking garages, that it was visited more widely by tourists than any other place we have in San Francisco, and we thought it would be feasible for him to carry our product, being that it was a nationally known product.

Q. Where did this conversation take place?

A. In Mr. Pansini's office.

[fol. 833] Q. Is that located at the garage?

A. In the garage.

Q. When did you say this occurred?

A. Either May or June, in '46.

Q. Could that be the latter part of May?

A. I am sure I can't just remember whether it was the latter part of May or the early part of June. I believe it was June.

Q. The first part of June?

A. The first part of June.

Q. Who was present during the conversation?

A. Clarence Arvin.

Q. Who is he?

A. Northern representative of Quaker State Oil Company.

Q. What further conversations took place at that time with Mr. Pansini?

Mr. Hall: That is objected to as hearsay.

The Court: Overruled.

The Witness: He was very much impressed with the presentation of our proposition, and said to come back the next time we were over in San Francisco, and he would let us know what he could do.

By Mr. Thody:

Q. Did you follow up on that?

A. Yes.

Q. Did you visit Mr. Pansini?

[fol. 834] A. That's right.

Q. When did you have your subsequent visit?

A. About 10 days later than the first call.

Q. When would that be?

A. It would be the early part of June.

Q. Where did that visit take place?

A. In Mr. Pansini's office.

Q. Who was present then?

A. Mr. Arvin.

Q. Were there any further conversations relating to your attempts to sell products at that time?

A. Yes.

Q. What were those conversations?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

Mr. Thody: You may answer.

A. Originally, as I said, we discussed in part our oil. He said he would find out if it was possible for him to do it. We went back to secure the answer. He said he had taken it up with the Standard Oil people, and it was not possible for him to stock Quaker State.

Q. Have you made sales at any time to this account?

A. No.

Q. Have you solicited yourself personally any other Chevron accounts?

[fol. 835] A. Yes, I have.

Q. Do you recall any particular account?

A. Not by name of the owner I do not, no.

Q. Do you recall any by the locations?

A. There is one in San Leandro.

Q. When did you solicit this account?

A. I would say that was July or August, probably, of '46.

Q. Do you keep records of the sales made by you to various garages and service stations?

A. Yes.

Q. Do those records include sales made by salesmen in your employ to whom you have referred in your previous testimony?

A. Yes.

Q. Do those records indicate any sales to Chevron stations?

Mr. Hall: Just a minute. That is objected to as not the best evidence.

By Mr. Thody:

Q. Have you examined these records recently?

A. Yes.

Q. Are those records kept or maintained under your supervision and control?

A. Yes.

[fol. 836] Q. Are those records kept in the regular, normal course of business?

A. Yes.

Q. Do you know, from examining those records, whether or not you sell to Chevron stations?

Mr. Hall: Objected to as not the best evidence.

The Court: I will allow it to that extent. But I may say you have not laid enough foundation to allow him to testify as to gallonage, or anything like that, or the amount of business. Under our rule you must have the originals here. That is the only condition under which a summary may be given by an accountant, or anyone who has charge of the records, and is the only safeguard the Circuit has put on it. As long as the originals are available in court, anybody can summarize them, merely to assist the Court: If you don't have them, he cannot testify. To the extent the present question goes I will allow it, but no further. Read the question, Mr. Dewing.

(Question read by the reporter.)

The Witness: We sell a few.

Mr. Thody: That is all. I move, your Honor, that Government's Exhibits for identification Nos. 53 and 53-A be admitted into evidence.

Mr. Hall: The defendants object to the introduction of these documents, and to each of them, on the ground that [fol. 837] they are irrelevant and immaterial, and not within the issues framed by the pleadings. The documents which are included in this offer are not documents embraced in either the complaint or the bill of particulars which was required to specify the documents upon which the Government was to rely.

The Court: I will have to examine them.

Mr. Thody: The document, your Honor, entitled: Distributor Agreement, true it does not appear on the regular form, but it contains the essential clauses and conditions which have been referred to in the complaint; and though it appears typed on a separate page, it is similar to the type referred to in Paragraph 27 and Paragraph 29 of the complaint.

Mr. Hall: And I add to my objection, your Honor, that certain of the documents, I think it is 53-A, are not documents between any third parties and any of the defendants in this case, and that as to those documents no proper foundation for their admission has been laid. Those documents are not only subject to the objections which I have heretofore stated, but they are incompetent.

Mr. Thody: May I ask counsel if your objection is solely to relevancy and materiality, or are you also objecting on the grounds of authenticity?

Mr. Hall: As to the document to which Standard is not a party, I certainly object upon the ground of lack of authenticity.

[fol. 838] Mr. Thody: The documents were furnished to the Government, your Honor, pursuant to Subpoena No. 1, and were included with the material requested, and were furnished by the defendents, and came from their files of records kept in the regular course of business by them.

The Court: Gentlemen, in the covering letter, if I may call it that, of this group of exhibits, dated August 29, 1947, and which are the top two pages of the exhibit, signed by W. G. Watson, Attorney in fact, reference is made to the condition under which the Union Square Garage is operating; and in the next letter which antedates it, which is dated March 1, 1945, some reference is made to stockholding in the company which operates the garage. For this reason I believe that the reference to these documents ties them to the letters and makes them admissible. And the fact that

they were so furnished in response to subpoena, shows that they were part of the files, and part of the documents to which the letter had reference. Otherwise, I agree with Mr. Hall, that they would not be admissible.

Mr. Hall: I hope your Honor won't overlook that part of my objection in which I allude to the pleadings, and particularly to the Bill of Particulars which, of course, is the charter we have assumed the Government is proceeding under in this case.

The Court: I don't remember to what portion of the Bill [fol. 839] of Particulars you refer. As I understand it, a Bill of Particulars does not stand in the way of proving the type of agreements which are involved in 53, upon the general issue of restraint.

Mr. Hall: That is the very point I am making, and what we have always had in mind since your Honor granted our motion for a Bill of Particulars.

The Court: Let me look at it.

Mr. Hall: We ask what particular forms of agreements the Government is going to rely upon; and in the Bill of Particulars they furnished us copies of those forms were given. Those forms are not like the documents now being pressed into evidence.

The Court: That is true as a general proposition, but I believe, however, the Government may show, notwithstanding the Bill of Particulars, that as to a particular distributor, say the Union Garage, a contract which was substantially of the same character was entered into, and so long as they are not so foreign to the issues the Government cannot be bound to the extent of not permitting a deviation in a form which is properly authenticated, because ultimately what these deal with is a form of agreement.

I am merely summarizing very quickly, gentlemen, what I find here, as I can read very quickly. I have what is called a proofreader's eye, having acquired it in long as- [fol. 840] sociation for many years with newspapers, and writing, like Mr. Hall himself. To continue, what I find in this letter is merely a form of agreement relating to the distribution of their products, in consideration of which they agree to put in some special equipment, for which a rental is to be paid in the sum of $5,900, as advance rental for the period of the contract, to be billed and deducted at the rate of $83.83. So that being the case, I think the Government is not precluded from introducing this merely

because it is not upon the particular form. For that matter, at the time the Bill of Particulars was granted, the Government, while it knew of the general nature of the agreements, could not know the deviations that were made in particular cases, and I think that the agreements in the record will show that, while certain forms were used, additions were made to suit a particular occasion, and that the contracts for that reason are not uniform, so far as the typewritten inserts are concerned.

The objection will be overruled. It may be received in evidence and marked 53.

The Clerk: Is that also true as to 53-A?

The Court: Yes.

The Clerk: 53 and 53-A in evidence.

Mr. Hall: Defendants move to strike the testimony of the witness which has reference to the Union Square Garage, [fol. 841] and to his conversations with Mr. Pansini, on the ground that such evidence is irrelevant, incompetent and immaterial, and not within any of the issues framed by the pleadings or clarified by the Bill of Particulars.

The Court: This is merely to save your record in regard to the possible limitation of the Bill of Particulars. Objection overruled.

Mr. Thody: That is all.

[fol. 842] By Mr. Hall:

Q. You stated in your direct examination that the Quaker State oils that you distribute were generally comparable to other oils. What other oils were you referring to?

A. Pennzoil, RPM, Triton and so forth.

Q. Give me the names of the ones that your oils are comparable to?

A. I would say Pennzoil and RPM.

Q. Were those the only ones?

A. Oh, there is various other oils.

Q. Well, name them, please.

A. Triton, Valvoline, Hyvis, Kendall.

Q. MacMillan?

A. Yes.

Q. Wolf's Head?

A. Yes.

Q. How about Mohawk?

A. Which type of Mohawk?

Q. Well, any type; is any type of Mohawk comparable?
A. Mohawk Penn.
Q. I am asking you.
A. I said, "Mohawk Penn."
Q. Oh, I see. By the way, what do you mean by "comparable"?
A. Selling somewhat in the same price class and promoted [fol. 843] as a top qualified oil by other companies.
Q. Does Richfield make an oil in that category?
A. Yes; I am sure they do.
Q. And they sell it?
A. Yes.
Q. In competition with your oil?
A. Yes.
Q. Does Shell make an oil in that category and sell it in competition with yours?
A. Yes.
Q. Does the Texas Company make an oil in that category and sell it in competition with yours?
A. Yes.
Q. Does Continental Oil Company make an oil in that category and sell it in competition with yours?
A. Yes.
Q. Does Tidewater Associated Oil Company make an oil in that category and sell it in competition with yours?
A. Yes.
Q. And Union does, too, does it not?
A. Yes.
Q. How about the Utah Oil Refining Company?
A. Who?
Q. Utah Oil Refining Company.
A. I know nothing of them.
[fol. 844] Q. Does the Wilshire put out an oil in competition with yours?
A. Yes.
Q. Does General Petroleum Corporation put out an oil in competition with yours?
A. Yes.
Q. How many salesmen did you have in the year 1945?
A. Three.
Q. How many in the year 1946?
A. Three.
Q. In the territory which is included under your distribution how many retail outlets purchased lubricating

oil or Quaker State lubricants from you during the year 1946?

A. I would say around 400.

Q. How many in 1947?

A. I would say approximately the same.

Q. Now, Mr. Estes, you spoke of seal containers. Will you describe what those are?

A. What we call the seal container is a 15-gallon container which can be sealed after delivery is made or before the delivery is made.

Q. Before the delivery is made. Well, it is not a can, is it?

A. No; it is a 15-gallon barrel I would call it.

[fol. 845] Q. Well, you say it is sealed before delivery is made?

A. It can be sealed at the warehouse when filled, before you deliver it to the customer, or after delivering it to the customer it can be sealed.

Q. Does that sealing prevent substitution?

A. Supposedly, yes.

Mr. Hall: That is all.

Redirect examination.

By Mr. Thody:

Q. Mr. Estes, in your testimony on the comparable oils —I refer to Shell, to Texaco and so on—have you in your visits to Chevron stations ever seen Shell oil displayed in a Chevron station?

A. No.

Q. Have you in your visits ever seen a Texaco oil displayed in Chevron stations?

A. No.

Q. Have you in your visits ever seen a Tidewater oil displayed in Chevron stations?

A. No.

Q. Have you in your visits ever seen a Union oil displayed in Chevron stations?

A. No.

Mr. Thody: That is all.

[fol. 846] Mr. Hall: Wait a minute.

Recross-examination.

By Mr. Hall:

Q. What do you mean by displayed when you answered those questions?

A. Displaying is visible to the customer.

Q. Well, that would apply only to packaged goods, wouldn't it?

A. No. It could be displayed properly in a highboy, labeled properly.

Q. Where would the highboy be placed?

A. Usually they are directly in front of the station or inside the station room.

Q. If it was inside the station you would say it was displayed?

A. I would.

Mr. Hall: That is all—wait a minute.

The Court: Just tell me one thing: "highboy," as I have learned to know the word, has reference to a certain type of piece of furniture ordinarily.

The Witness: It is a container made of a single piece.

The Court: Why do you call it "highboy"?

The Witness: Because it stands up high.

The Court: It stands up high like the old-fashioned piece of furniture that we used to call a highboy, is that it?

[fol. 847] The Witness: That is right; with a pump on top of it.

The Court: What is it?

The Witness: With a pump on top of it.

The Court: With a pump on top of it.

The Witness: That is right.

The Court: That is all.

Mr. Hall: Just a minute.

Q. Assume that you are distributing Quaker State lubricating oils at a given service station by means of highboys, how many highboys would you normally require?

A. Three.

Q. Why would you require three?

A. Those are the popular weights of oil the customer buys.

Q. Well, how many weights does Quaker State put out?

A. They put out about—I think it is—let's see: 10, 20, 30, 40, 50, 60, and 70.

Q. So, according to your testimony, then, if I understand your correctly, to normally display a Quaker State lubricating oil, if you displayed it in highboys, you would have to have three highboys and they would be put either in front of the station or inside the station office, is that right?

A. That is right.

Q. I beg pardon?

[fol. 848] A. Yes.

Q. How would its display inside the station office in highboys apprise the traveling motorist of the fact that Quaker State is being dispensed at the station?

A. By the highboys being properly labeled and with a target sign on top of the pump, which is usually above the vision of the window.

Q. If they were inside, you would have to go inside to look at them, wouldn't you?

A. I hardly think so. Most of these stations are fully glassed so that people see right into the station.

Q. You are assuming a station fully glassed?

A. That is right; which they are.

Mr. Hall: Thank you. That is all.

Redirect examination.

By Mr. Thody:

Q. Mr. Estes?

A. Yes, sir.

Q. In addition to selling oil through highboys do you also sell oil in packaged containers?

A. Oh, yes.

Q. Approximately what percentage of your business is sold in packaged containers?

A. I would say ours is about 70 per cent.

Q. And when you sell goods in highboys is it customary [fol. 849] for you to also furnish advertising equipment?

A. That is right.

Q. What is the type of such advertising equipment furnished by you?

A. It is usually a curb sign.

Q. And how would that curb sign be used?
A. Be displayed out on the corner of the lot or visible to the traveling trade.

Mr. Thody: That is all.
Mr. Hall: Just a moment.

Recross-examination.

By Mr. Hall:

Q. Which do you prefer to sell, quantities in highboys or quantities in what you call packaged containers?
A. Well, from a profit standpoint we prefer to sell bulk.
Q. I beg your pardon?
A. From a profit standpoint you prefer to sell bulk oil.

Mr. Hall: That is all.
Mr. Thody: That is all.
The Court: All right. This is a good time, gentlemen, to take a short recess as long as they finished with this witness. Then we won't have to interrupt the testimony of the next witness.

[fol. 850] (Short recess.)

Mr. Somerville: The Government calls Robert A. Beaman.

Robert A. Beaman, called as a witness by the Government, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Robert A. Beaman, B-e-a-m-a-n.
The Clerk: B-e-a-m-a-n?
The Witness: Right.

Direct examination.

By Mr. Somerville:

Q. Where do you reside, sir?
A. 1129 South Prospect Avenue, San Gabriel.
Q. By whom are you employed, Mr. Beaman?
A. Quaker State Oil Refining Company of California.
Q. In what capacity?
A. Salesman.

Q. How long have you been a salesman for Quaker State Oil?

A. Three years.

Q. Will you state generally what your duties are as a salesman?

A. Calling on all retail trade such as service stations, car dealers, garages, and so forth, to sell Quaker State motor oils and lubricants.

[fol. 851] Q. What area or territory do you serve?

A. A territory comprising Pasadena, Alhambra, San Gabriel, San Marino, and parts of Los Angeles.

Q. During the course of your duties have you called upon service stations distributing Standard gasoline or Chevron stations?

A. Many times.

Q. Have you ever called on a service station operated by H. E. Bagley, at 3698 East Colorado Boulevard in Pasadena?

A. Yes.

Mr. Hall: What was the name of the man?

Mr. Somerville: H. E. Bagley.

The Government asks that dealer agreement TBA dated August 16, 1946, between H. E. Bagley and the Standard Oil Company of California, produced under subpoena No. 1, item 2, be marked for identification.

[fol. 852] The Clerk: Government's Exhibit 54 for identification.

By Mr. Somerville:

Q. When did you first call upon Mr. Bagley?

A. It was the latter part of 1946, between November and December.

Q. Were you successful in selling your products?

A. No.

Q. Did you make any additional calls?

A. Yes.

Q. When, approximately?

A. The last time——

Q. How often did you call on Mr. Bagley?

A. Possibly three times.

Q. When was the last time you called on Mr. Bagley?

A. In April of this year.

Q. During any of those calls were you successful in making sales?

A. No.

Q. On your last call, in April, were any conversations held with respect to Mr. Bagley stocking your products?

A. Yes.

Q. Where were those conversations held?

A. In the station.

Q. Who was present at the conversations?

A. Mr. Bagley and myself.

[fol. 853] Q. What were the conversations?

A. I asked him if he did not have calls for Quaker State.

Mr. Hall: I object to this as hearsay, if the Court please.

The Court: Overruled.

By Mr. Somerville:

Q. You may answer.

A. I asked him if he had calls for Quaker State, and he said he had calls for numerous brands of products, but just because his name was across the top of that building did not mean a thing; that he was unable to handle them.

Mr. Somerville: The Government offers Government's Exhibit 54 in evidence.

Mr. Hall: The objection is made to each and all of the documents, on the ground that they are irrelevant and immaterial.

The Court: Is this the same type as the other?

Mr. Somerville: Yes, your Honor.

The Court: This is a TBA agreement of the Atlas pattern. Overruled.

The Clerk: 54 in evidence.

By Mr. Somerville:

Q. Have you ever called on a service station operated by Guy Moody, at York and Eagle Rock Boulevards, Los Angeles?

A. Yes.

[fol. 854] Q. When did you first call on this station?

A. Between November and December, of 1946.

Q. This is a Chevron station?

A. Yes.

Mr. Somerville: The Government asks that certain documents produced under Subpoena No. 1, Item 3, be marked for identification. The documents relate to the premises at 4401 Eagle Rock Boulevard, and consisting of a lease dated April 2, 1945, between Guy A. Thompson and Celia C. Thompson, and Guy W. Moody and Winona M. Moody, and a sublease dated July 1st, 1945, between the Standard Oil Company, lessor, and Guy W. Moody and Winona M. Moody, and an agreement dated July 31, 1945, between Guy W. Moody and Winona M. Moody, Guy A. Thompson and Celia C. Thompson and Standard Oil Company of California, assigning Lessee Moodys' right, title and interest to the Standard Oil Company; and a TBA agreement dated July 1st, 1945, between Guy W. Moody and the Standard Oil of California.

The Clerk: Government's Exhibit 55 for identification.

By Mr. Somerville:

Q. What were the circumstances that led to your calling on Mr. Moody?

A. For the same purpose as previously stated, to further the sales of Quaker State motor oils and lubricants.

Q. Did you make this call at the suggestion of anybody?

A. Yes, I did.

[fol. 855] Q. At whose suggestion?

A. At a Mr. Haywood's suggestion, who operates a service station across the street from Mr. Moody. Mr. Haywood is a dealer in Quaker State.

Q. When did you make this call?

A. That would have been the second call, which would probably have been in June, 1947.

Q. Were you successful or unsuccessful in selling Mr. Moody your product?

A. Unsuccessful.

Q. Did any conversations occur at this time concerning his handling your product?

A. Yes.

Q. Where were the conversations held?

A. In the station.

Q. Who were present?

A. Just Mr. Moody and myself.

Q. What were the conversations?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. Mr. Moody told me that he did have some calls for Quaker State motor oil, and to satisfy those calls that he was going across the street to Mr. Haywood and buying Quaker State; that he had anticipated making an addition to his station in the form of an additional lube rack and [fol. 856] garage, and that when that was completed he would have a place where he might store a few cases of Quaker State, to have them out of sight, and would buy it.

By Mr. Somerville:

Q. Have you made any other calls on Mr. Moody?

A. Yes.

Q. Have you observed whether or not the shed has been constructed?

A. I think it has.

Q. Have you approached Mr. Moody with respect to storing Quaker State products in this shed?

A. No.

Q. Have you sold any Quaker State products to him at all?

A. No.

Q. Have you ever called at the service station operated by Wynn Blevins, at 2270 East Colorado Boulevard?

A. Yes.

Mr. Hall: What is the name?

Mr. Somerville: Blevins.

Q. And when did you first call on Mr. Blevins?

A. It would have been between the latter part of October —between October, November and December of 1947, the first time.

Q. Were you successful or unsuccessful in selling him? [fol. 857] A. Unsuccessful.

Q. Did you make additional calls?

A. One.

Q. When was that?

A. In April of this year.

Q. Were you successful or unsuccessful?

A. Unsuccessful.

Q. In your sales approach to Mr. Blevins, have you asked Mr. Blevins whether or not he has received any calls for Quaker State oils?

A. Yes.

Q. When did a conversation of this character take place?

A. On my last call.

Q. In April?

A. Yes.

Q. Where?

A. At the station.

Q. Who was present?

A. Just Mr. Blevins and myself.

Q. What was said?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

The Witness: I asked him if he ever had any calls for Quaker State. He said yes, that he did; that sometimes he [fol. 858] would go across the street to his competitor, who handles Quaker State, and would buy to satisfy the demands, if necessary.

Mr. Hall: If the Court please, now that the answer has come in, I move to strike the answer on the ground that under the Court's ruling, what the dealer said does not indicate motive, but it is a factual statement.

The Court: The objection is probably good as to the last part of the answer. Will you read the entire answer so that I can segregate one portion from the other?

(Answer read by the reporter.)

The Court: I think the first sentence may remain. The remainder may be stricken.

Mr. Somerville: Quite agreeable.

Mr. Hall: I now move that the witness' testimony concerning a statement made by Guy Moody that he had gone across the street and purchased Quaker State, be stricken.

The Court: That will be stricken.

By Mr. Somerville:

Q. Were you able to interest Mr. Blevins thereafter in carrying a regular stock of Quaker State products?

Mr. Hall: Just a minute before you answer. That is objected to as calling for the conclusion of the witness.

(Question read by the reporter.)

The Court: I will sustain the objection. It calls for a [fol. 859] conclusion. I think the question should be along the same line as in the past, as to whether he called again, and whether he was successful, rather than a general statement as to whether he was interested or not.

By Mr. Somerville:

Q. Did you call any further on Mr. Blevins?
A. No.
Q. You never sold him any Quaker State products?
A. No.

Mr. Somerville: I should like at this time to have dealer agreement TBA, dated May 15, 1947, between Standard Oil Company of California and W. Blevins, covering the premises at 2270 East Colorado Boulevard, Pasadena, California, which was produced pursuant to Subpoena No. 1, Item 4, be marked for identification.

The Clerk: 56 for identification.

By Mr. Somerville:

Q. Have you ever called at a service station at 725 East Valley, San Gabriel, operated by Bill and Cecil Russell?
A. Yes.
Q. When did you begin calling on that service station?
A. November, 1946.
Q. Have you sold any oil there?
A. Yes.
Q. Have you observed anything with respect to the man- [fol. 860] ner in which this oil was handled?
A. Yes.
Q. How was it handled?
A. It was never displayed.

Mr. Somerville: At this point, I would like the record to show that there was a dealer agreement TBA, dated March 24, 1947, between W. A. Russell and C. L. Russell, parties of the first part, and Standard Oil Company, which is now in evidence as Government's Exhibit 46. I move the introduction into evidence of Government's Exhibit 55 for identification.

Mr. Hall: Objected to, as to each and all of the documents so offered upon the ground that they are irrelevant and immaterial.

The Court: Overruled. It may be received.

The Clerk: 55 in evidence.

Mr. Somerville: The Government at this time offers in evidence——

Mr. Hall: Let us examine it first, before you offer it.

Mr. Somerville: If you so desire, Mr. Hall. The Government offers Government's Exhibit 56 for identification into evidence.

Mr. Hall: The defendants object to each and all of the documents offered on the ground that they are irrelevant and immaterial.

The Court: Overruled. It may be received and marked 56.

[fol. 861] The Clerk: 56 in evidence.

The Court: It is another TBA agreement of the Atlas type.

Mr. Somerville: That is all.

Cross-examination.

By Mr. Hall:

Q. Where did you say you lived?

A. 1129 South Prospect Avenue, San Gabriel.

Q. Are you related to John Beman, who appeared upon the stand heretofore?

A. No.

The Court: Is his name spelled the same as yours?

The Witness: I spell my name Beaman.

By Mr. Hall:

Q. Did you ever discuss anything connected with this case with the Federal Bureau of Investigation, otherwise known as the FBI?

A. No, sir.

Q. You have been a salesman for three years, is that correct?

A. Yes, sir.

Q. What was your occupation before you were a salesman for Quaker State?

A. During the war I worked at the Douglas Aircraft Company, Long Beach. Prior to that I was in the oil business.

[fol. 862] Q. In the oil business?

A. Yes.

Q. What phase of the oil business?

A. I was a salesman.

Q. Of lubricating oil?

A. Yes.

Q. Quaker State?

A. No.

Q. For what company?

A. Continental Oil Company.

Q. Here in Los Angeles?

A. No, out of Kansas City, Missouri.

Q. How many accounts did you call upon in the year 1946?

A. How many accounts in 1946?

Q. Yes.

A. May I ask a question?

Q. If the question is not clear to you, indicate what your doubt is.

A. Do you mean the number of accounts that I have——

Mr. Hall: Let me reframe the question.

Q. How many retail outlets did you visit in the year 1946, for the purpose of inducing them to buy your products? I am including all outlets, whether you sold the outlets or whether you did not.

[fol. 863] A. That would be a very difficult question for me to answer.

Q. Approximately?

A. In the year 1946?

Q. Yes.

A. Probably 3600, total calls.

Q. How many of those did you sell, approximately?

A. Probably 2400.

Q. In the year 1947 how many outlets did you call upon?

A. Those are not separate and distinct accounts, Mr. Hall.

Q. I beg your pardon?

A. That number are not separate and distinct calls. Those are repeat calls.

Q. Let us get at it then in another way. How many separate and distinct retail outlets did you call upon in

the year 1946 for the purpose of inducing them to buy your products, whether you were successful or not?

A. I don't understand the question.

Q. Give me another try at it, and I will see if I can make you understand it. We are talking now about the year 1946. You understand that?

A. Yes.

Q. In that year how many separate retail outlets did you call upon for the purpose of inducing the retail outlet [fol. 864] to buy your product?

A. I would say between——

Mr. Somerville: I object to the question upon the ground that it is irrelevant and immaterial.

The Court: Overruled.

A. I would say between 300 and 350.

By Mr. Hall:

Q. How many did you sell?

A. Probably 200.

Q. In the year '47, how many separate and distinct retail outlets did you call upon for the purpose of inducing them to buy your product?

A. 300.

Q. How many did you sell?

A. 200.

[fol. 865] Q. In the year 1945 how many did you call upon, separate and distinct outlets?

A. Probably 300.

Q. How many did you sell?

A. I imagine 225.

Q. In connection with Russell Brothers down at San Gabriel you said that they did buy Quaker State products after they became a Chevron station, is that right?

A. I never called on them when they weren't a Chevron station.

Q. Well, they bought Quaker State products, didn't they?

A. Yes.

Q. Now, you said they never displayed the products. Do you recall that testimony?

A. Yes.

Q. What do you mean by that?

A. It was never visible.

Q. Visible from where?

A. From anywhere other than unless you opened the door or——

Q. Opened the door to what?

A. Of the small shed that was attached to the back of one of the buildings in the back of their lot.

Q. They kept the Quaker State, then, in a small shed and it was shut up in the shed by means of a closed door, is [fol. 866] that right?

A. Yes, sir.

Q. That was true each time you went carrying the Qraker State, was it?

A. Every time that I called on them; that is right.

Q. What other lubricating oils were they carrying at that station at that time?

A. I have no knowledge of that.

Q. You didn't see any other lubricating oil at the station?

A. No.

Q. You didn't even see RPM?

A. Oh, RPM, yes.

Q. Oh, they had RPM, did they?

A. RPM, yes.

Q. Where did they display that?

A. They had that in the cans inside the window on a little shelf and in highboys in front of the station.

Q. Highboys in front of the station?

A. Yes.

Q. You are sure they were in front?

A. Yes.

Q. The Quaker State that they had shut up in the woodshed was that in bulk, that is, in highboys or was it in cans? [fol. 867] A. In cans.

Q. All of it was in cans?

A. Yes.

Q. They had no highboys at that station?

A. No; of no Quaker State.

Q. They had no—what the previous witness called containers, is that right?

A. No containers; no.

Q. What other lubricating oil, now, did you see at the station besides RPM and Quaker State?

A. Standard Penn.

Q. What else?

A. I think that covers it as far as I know.

Q. Did they have the RPM and Quaker State in highboys?

A. The RPM in highboys.

Q. Just the RPM?

A. Well, I think that they have some Standard Penn in highboys.

Q. How many times did you visit that woodshed?

A. About every three weeks.

Q. Every three weeks during what period?

A. From October of 1946 until now.

Q. Until when?

A. Until within the last 30 days.

Q. Every three weeks during that year?

[fol. 868] A. Approximately.

Q. Was the stock of Pennzoil replenished in that shed?

A. I never saw any Pennzoil.

Q. I beg your pardon, Quaker State?

A. Yes.

Q. You took orders for Quaker State from time to time?

A. Yes.

Q. Did you ever see the dealer at that station serve Quaker State to a customer?

A. No.

Q. How large a consignment of Quaker State did they have in the woodshed?

A. Of Quaker State?

Q. Yes.

A. There was no consignments.

Q. Well, you know, I mean quantity. How big a quantity was it?

A. Usually—do you mean in what quantities did they buy or what was in there?

Q. Well, let us put it this way: What was the largest quantity of Quaker State you ever saw in the woodshed?

A. Approximately three cases.

Q. Three cases?

A. Yes.

[fol. 869] Q. That was the largest quantity they ever kept?

A. That was the largest quantity that I ever noticed. They have made larger purchases than that.

Q. You went to the woodshed every time you went to the station?

A. Not every time; no.

Q. What?

A. Not every time; no.

Q. How many times did you see this Quaker State in the woodshed?

A. I would say six times.

Mr. Hall: That is all.

The Court: All right. Any redirect?

Mr. Somerville: Just a moment, please. I think that will be all.

The Court: All right, step down. Call your next witness.

Mr. Somerville: The Government calls Russell Garett Stephens.

Russell Garett Stephens, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Russell Garett Stephens.

The Clerk: R-u-s-s-e-l-l?

[fol. 870] The Witness: That is right.

The Clerk: Your middle name?

The Witness: Garett.

The Clerk: Spell it, please.

The Witness: G-a-r-e-t-t.

The Clerk: And your last name?

The Witness: Stephens.

The Clerk: Spell it, please.

The Witness: S-t-e-p-h-e-n-s.

Direct Examination.

By Mr. Somerville:

Q. Where do you reside, Mr. Stephens?

A. No. 11 Nevada Way, Henderson, Nevada.

Q. What is your occupation?

A. At the present time I am unemployed. I am unoccupied.

Q. Have you been engaged in the service station business?

A. I have.

Q. Were you at one time the operator of a Chevron service station located at the corner of Victory Road and Boulder City highway at Henderson, Nevada?

A. I was.

Q. And was that a Chevron service station?

A. Not at the time I took over management of it or [fol. 871] the operation of it.

Q. What type of station was it at that time?

A. It was a red, white and blue Standard dealer station at the time I took over.

Q. At the time that you took over what was the approximate time that you took over the station?

A. August the 1st, 1945.

Q. And did you enter into certain agreements with Standard Oil Company?

A. I did.

Q. A TBA agreement dated August 10, 1945?

Mr. Hall: Now, just a minute. That is not the best evidence, calling for not the best evidence.

The Court: I can't hear your objection, Mr. Hall.

Mr. Hall: Well, I think he is going to produce the agreement, your Honor.

By Mr. Somerville:

Q. I will show you this agreement, dealer agreement TBA dated August 10, 1945, with the Standard Oil Company of California and Russell Stephens. I will ask you to examine that and tell me whether that is a true photostatic copy of your agreement.

A. That is right.

Mr. Somerville: I would like the record to show at this point that Government's Exhibit 43 in evidence is dealer agreement TBA to which Russell Stephens is a party, and [fol. 872] that this is the same Stephens mentioned by George W. F. Johnson, a previous witness from the McQuay Supply Company in Las Vegas.

Q. Upon commencing to operate this station——

Mr. Hall: Would you pardon me a minute, Mr. Somerville?

Mr. Somerville: I am sorry, Mr. Hall.

Mr. Hall: If you will permit me a little time I want to examine this document, if you can spare just a moment, before you go on.

Mr. Somerville: Certainly. It is in evidence, Mr. Hall.

Mr. Hall: Yes; I understand it is in evidence.

Mr. Somerville: I merely wanted to tie this witness into the previous testimony. We had anticipated that he would be here with Mr. Johnson but our schedule went awry.

Mr. Hall: All right. Thank you, Mr. Somerville.

By Mr. Somerville:

Q. Upon commencing to operate this station, Mr. Stephens, did you order supplies from Standard Oil and greases from Standard Oil?

A. I did.

Q. And did you obtain the supplies?

A. I did not obtain all that I ordered from them.

Q. What supplies of oils did you stock?

A. Of the Standard Oil products?

Q. Yes.

A. Well, I supplied bulk oil only, which was the only [fol. 873] type oil that they could supply me with.

Q. They were unable to supply you at that time canned oil?

A. No; they were not able to supply me with canned oil.

Mr. Hall: Wait a minute. I did not hear the reply of the witness. Will you read it, please?

(Answer read by the reporter.)

By Mr. Somerville:

Q. Did you order supplies of competitive oils and greases?

A. I did.

Q. From whom?

A. From the McQuay Supply Company of Las Vegas, Nevada.

Q. When did you first order oil from them?

A. December the 18th, 1945 was the first purchase.

Q. And did you stock the oil in your station?

A. That is right.

Q. What type of oil was this?
A. Canned oil only.
Q. I mean what brand?
A. Quaker State oil.
Q. And did you make additional purchases of Quaker State Oil?
A. I did.
[fol. 874] Q. Also from the McQuay Supply Company?
A. Yes, sir.
Q. Did you at any time receive any instructions concerning the handling of competitive oils and greases?
A. I did.
Q. When?
A. Approximately the fourth or fifth day of February, 1946.
Q. From whom?
A. Mr. E. D. Westbrook.

Mr. Hall: I did not get the name.

(Answer read by the reporter.)

By Mr. Somerville:

Q. And who is Mr. Westbrook?
A. Mr. Westbrook was the Standard Oil representative for that district.
Q. And where did these instructions occur?
A. They occurred in my grease rack at the station.
Q. Were any other parties present?
A. I believe my lubrication man was present.
Q. What was his name?
A. Art Walker.
Q. And what were the instructions that were given to you?
A. To discontinue the handling of the Quaker State oil.
Q. Mr. Westbrook then noticed the Quaker State oil in
[fol. 875] your station?
A. That is right.
Q. And did you have that displayed prominently?
A. Not prominently; no.
Q. Did Mr. Westbrook inspect the station?
A. That is right.
Q. And he discovered this oil?
A. Yes, sir.

Q. And his instructions, as I understand your testimony, was to get rid of it?

A. To discontinue the handling of it.

Q. Did you make any further purchases of Quaker State oil?

A. I made one purchase after that.

Q. And when was that purchase?

A. That was in March, approximately the 15th.

Q. How long after this visit would that be?

A. Well, approximately a little over a month.

Q. Was anything further said to you with respect to handling Quaker State oil?

A. Yes.

Q. When?

A. Well, during the visit in February, the fourth or fifth.

Q. I asked you if any further instructions were given [fol. 876] to you. You testified as to a conversation in February and then you testified to a purchase of oil in March.

A. That is right.

Q. Was anything said to you after that purchase in March?

A. There was.

Q. By whom?

A. By Mr. Westbrook.

Q. Where?

A. In my station, in the office.

Q. When?

A. Well, approximately the 18th—well, approximately the 20th day of March, shortly after I had made my purchase.

Q. Were there any other parties present?

A. Well, employees was in and out of the office. They wasn't present during the entire conversation.

Q. What happened and what was said?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. Well, after an inspection of my station by Mr. Westbrook he found approximately six cases of Quaker State oil partially hid in my lubrication room and immediately come to my office, called me into my office, rather, and said,

"Mr. Stepheus, I wasn't kidding you last month when I was out here about discontinuing the handling of Quaker" [fol. 877] —first, he said, asked me if that was still part of the oil from February that he had seen; and I told him, no; it was an additional purchase. And he told me that he wasn't kidding me when he told me to discontinue the handling of Quaker State and competitive oils. He mentioned the fact that it was a violation of my agreement and it wasn't the Standard Oil's policy, or against the Standard Oil's policy.

Q. And did you thereafter comply with the admonitions given to you?

A. I did.

Q. And did you thereafter have any further salesmen come from McQuay Supply Company to sell you oil?

A. I did.

Q. Did you have salesmen from any other companies there?

A. Yes, sir.

Q. What were some of them?

A. Well, Pennzoil, Havoline—well, IsoVis, Valvoline, a number of different ones that I can't recall at this present time. I remember the MacMillan oil and the Pennzoil and the Havoline and the Valvoline. There was dealers who wanted to sell refined oil which I faintly remember that they were in the station trying to make a sale.

Q. On the customer end of this did you have any request for competitive oils?

A. Very much so.

[fol. 878] Q. And with respect to the Quaker State oil which you did handle in your station did you have a number of customers who requested that oil?

A. I did.

Q. After you discontinued selling Quaker State oil did these customers again request oils, any of them?

A. They did.

Q. What happened with respect to your sales after that to these customers on oils?

A. My lubrication sales——

Mr. Hall: Just a minute. That calls for a conclusion of the witness, no proper foundation laid.

Mr. Somerville: I will withdraw the question and frame another one.

Q. Did you thereafter sell these customers oils?

A. No.

Q. Did you sell them gasolines?

A. Yes, sir.

Q. And that was Standard gasoline?

A. Standard gasoline; that is right.

Q. Directing your attention now to tires, tubes, batteries, and other accessories, did you handle these items for sale to the motoring public?

A. I did.

Q. Did you receive any instructions from Standard Oil [fol. 879] supervisors concerning the sale of these items?

A. I did.

Q. When, where, and by whom did you receive these instructions?

A. Well, there was several calls made by Mr. Westbrook, who was the district manager, and I can't recall the last name of his associate there. Phil was the only name that I recall, was his first name, who occasionally come in the station with Mr. Westbrok. He was handling the salesmen's service on accessories and so forth.

Q. Can you fix an approximate time of one of these visits?

A. Well, approximately the 15th day of August, 1946 was the first time it come to my attention, that Mr. Westbrook called on me.

Q. Were any parties present other than Mr. Westbrook and the gentleman whose name you can't fill in?

A. No.

Q. And what were the instructions you received?

A. That now that the accessories, tires, batteries and so forth were becoming more avaliable at the TBA supply house, it was suggested by Mr. Westbrook or requested by Mr. Westbrook and Phil that I make all purchases of these items that I could possibly use.

Q. Did you comply with these instructions?

[fol. 880] A. I purchased as much as Standard Oil would send me.

Q. Did you stock competitive tires at the same time that they were able to supply you with Atlas tires?

A. I stocked them—I didn't stock them, no; but I obtained them for my customers.

Q. Did you have customers that requested brands of tires, tubes, and batteries other than Atlas?

A. I did.

Q. What would you do with respect to their requests?

A. I would make a special trip in to Las Vegas to obtain these here different tires and tubes and batteries for my customers.

Q. And where would you make delivery of those items?

A. Well, I would install them on the car in my station.

Q. Oh, you would mount them on the car?

A. That is right.

Q. And they would roll away with them?

A. That is right.

Q. Were you ever caught handling any competitive tires in your station by any representative of the Standard Oil Company?

Mr. Hall: Now, just a minute, if the court please. That is calling for a conclusion of the witness, no proper foundation laid, incompetent, irrelevant and immaterial.

The Court: Well, I think it is a preliminary question to [fol. 881] be followed by his statement.

Mr. Somerville: It is a preliminary question.

The Court: Overruled.

Mr. Hall: What does he mean by "caught"?

The Court: I presume he means caught in the act of something. Go ahead; you may answer.

The Witness: Yes.

By Mr. Somerville:

Q. When did this event occur?

A. The early part of June, approximately the 7th of June, 1947.

Q. At your station?

A. That is right.

Q. And who appeared there?

A. The new manager, whose name was Cles Turner.

Q. And were any other parties present at the time?

A. Not to my recollection.

Q. And what did Mr. Turner do? Did he inspect your station?

A. That is right.

Q. And what did he say?

A. Well, he found two tires hid back in the back part of my stock room.

Q. What kind of tires were they?

A. Diamond tires.

Q. Where did you receive those tires?

[fol. 882] A. I received those from the House of Price Tire Company.

Q. Where is that located?

A. Well, it is located just about a half a mile from my station, down on the Boulder highway.

Q. What did Mr. Turner say with respect to these tires?

A. He asked me what the tires was doing in there and I told him I had a chance to purchase them, since the Standard Oil was unable to supply me with them and I had a number of calls for that type of tires; so I purchased them and put them back in the stock room.

[fol. 883] Q. And did he give you any instructions as to stocking these competitive tires?

A. He gave me quite a balling out about it, and told me to discontinue it.

Mr. Hall: I move to strike the answer of the witness.

The Court: "Balling out" may go out. He told you to discontinue it?

The Witness: He told me to discontinue handling any competitive accessories, as at the present time there was plenty of their merchandise available at the Standard Oil TBA supply houses.

By Mr. Somerville:

Q. This happened in June, 1947?

A. That's right.

Q. How long did you continue to operate the Chevron station?

A. Until August 1st, 1947.

Q. Then what happened?

A. I was kicked out of the station at that time.

Q. Your agreement terminated at that time?

A. That's right.

Q. This was prior to the expiration of the agreement?

Mr. Hall: Just a minute. May I have the question read, please?

(Question read by the reporter.)

The Court: That is a mere statement of fact. I will strike [fol. 884] the question.

Mr. Somerville: I am sorry. That will be all.
The Court: Cross-examine.

Cross-examination.

By Mr. Hall:

—. Did you say these documents were in evidence, Mr. Somerville?
Mr. Somerville: Yes. I believe I said 46. It was 43.

By Mr. Hall:

Q. You recall a conversation that you have testified to that occurred sometime in February, 1946, when Mr. Westbrook was present?
A. That's right.
Q. What date in February was that?
A. Approximately the 4th or 5th.
Q. How do you place that date?
A. It was shortly after my purchase of oil that I made.
Q. How do you fix it as the 4th or 5th of February instead of the 15th of February?
A. I said approximately the 4th or 5th.
Q. It might have been the 15th?
A. Sir?
Q. It might have been the 15th of February?
A. It could have been the 15th, yes.
Q. Could it have been the 25th of February?
A. No.
[fol. 885] Q. How do you know that?
A. Because it wasn't that far along in the month.
Q. What was it Mr. Westbrook said on that occasion?
A. He asked me what I was doing with the Quaker State oil, and I told him that I had quite a number of calls for Quaker State oil, and also Pennzoil, and he said I should only try to make sales of RPM oil, and Standard products; that the Standard Oil had quite a bit of expensive advertising, and so forth, and it wasn't fair to them for me to handle other types of oil. He asked me to discontinue handling Quaker State, or told me to discontinue.
Q. When was your next conversation with Mr. Westbrook?
A. It was in March; approximately the 15th.

Q. During the time that you were operating the station in Henderson, Nevada, were you operating any other business?

A. No.

Mr. Somerville: May I have the question read?

(Question read by the reporter.)

The Witness: May I add to that?

The Court: Yes, you may.

The Witness: I had invested in another business, but was not active in this here business.

By Mr. Hall:

Q. What was the other business?

A. It was the starting of the Nevada Wholesale Meat business.

[fol. 886] Q. Where was that place of business?

A. That place of business was located at the BMI plant, Henderson, Nevada.

Q. What do those initials stand for?

A. Basic Magnesium, Incorporated.

Q. As a matter of fact, the service station you have been talking about at Henderson, Nevada is located upon Government property, isn't it?

A. That's right.

Q. I think you testified that you were kicked out of the station by the Standard Oil Company. Is that your testimony?

A. That's right.

Q. Who kicked you out?

A. The Standard Oil Company.

Q. What person?

A. A representative of the Standard Oil Company.

Q. He did not actually kick you, did he?

A. No.

Q. He said something to you, didn't he?

A. Yes.

Q. What did he say to you at the time this occurred, this kicking out?

A. In the early part of July was when he came into my station.

[fol. 887] Q. Let us start right at the beginning, and get the whole story from you.

A. Well, he came into my station approximately the 9th day of July, 1947.

Q. How do you remember those dates so accurately?

A. I said approximately the 9th.

Q. Approximately the 9th? How do you fix that?

A. I remember definitely it was the 9th of July on this particular incident.

Q. Who was he—he came in?

A. Cles Turner.

Q. Was anybody else present besides you and Cles Turner?

A. One of my employees, in the tire shop.

Q. What is his name?

A. Archie Walters.

Q. What was said?

A. He got out of his car and walked up to me and says, "Russ, I want to talk to you," in a very gruff voice. I says, "What's the trouble?" He says, "I don't like the way you are running this station. We are putting a new manager, a new operator in here." He says, "Do you want to resign your operation here voluntarily, or do we have to throw you out?"

I says, "What seems to be the trouble here?" Well, he [fol. 888] mentioned something about gallonage dropping off. That was the only statement that he had.

Q. You are sure of that?

A. That's right. That was the only statement that he made to me.

Q. All right. What else was said?

A. I told him I was not prepared to give him an answer on such short notice. He says, "I will be back tomorrow to get the answer." And the next day he come back, and he had Phil with him.

Q. Who?

A. This Phil. I can't think of the last name. He was in charge of the sales and service out of Las Vegas branch office.

Q. When was that, the next day?

A. This was the following day, yes. And it was in my office, in the service station proper. And he said, "I come out to get your answer."

I told him I had not had time to consult an attorney, and therefore was not prepared to give him no answer. He

told me it wouldn't do no good to see an attorney; that the Standard Oil Company retained the right, under the terms of the agreement, to give me 30 days notice to get out. My argument was that I had a considerable amount of money invested in equipment and inventory, and I would have to [fol. 889] make some kind of arrangement to dispose of it.

He says that was no concern of his. I told him, "If that's the attitude you take it is no concern of mine whether I give you an answer at this here date or not."

He said something about giving me ten minutes. I told him to get out of the station. I was not ready to give him no answer in ten minutes.

Q. Was that all of that conversation?

A. That was all of the conversation, yes, and he got in his car, and left.

Q. What equipment did you have at the station belonging to you?

A. I had grease equipment, tire equipment, tools for a small garage. I had made purchases of hoses and chucks, and so forth. There was two pressure grease equipment. One was stationary and one was portable, and various tires, equipment vulcanizers, and so forth. I had a large chest of tools. I had a large—approximately $350.00 worth of auto accessories, such as pumps and wheel bearings, fuel pumps, water pumps, and stuff of that sort.

The Court: That was new merchandise?

The Witness: That was new merchandise.

The Court: To use in repairing?

The Witness: That's right.

The Court: Did you have a regular repair shop back of [fol. 890] the garage?

A. I was using what was designed in the station as a wash rack, to make small minor repairs.

The Court: Minor repairs?

The Witness: That's right.

The Court: You did not have a shed or garage? It wasn't covered?

The Witness: Yes, it was covered, but it had no doors in the front.

The Court: One of those open sheds that they have back of the garage?

The Witness: Yes, it was joining my grease rack.

By Mr. Hall:

Q. How much did the Standard Oil Company pay for the equipment?

A. Offhand, I don't recall. I don't have them figures with me.

Q. Your memory on that figure is not as good as on these various specific dates?

A. There is only one date I am specific on; that is on July 9th.

Q. Oh, no, your dates are very specific: February 4th or 5th.

A. Those are approximate dates.

Q. Just a minute. February 21, August 15, June 7, 1947, and then this more recent date you have testified to, when [fol. 891] negotiations occurred with Mr. Turner.

Mr. Somerville: If your Honor please, this is highly argumentative.

The Court: Cross examination may be argumentative.

By Mr. Hall:

Q. The Standard Oil paid you something, didn't they?

A. That's right.

The Court: They bought the equipment from you?

The Witness: They bought part of the equipment.

The Court: What did you do with the remainder?

By Mr. Hall:

Q. If I suggested to you that they paid you $1164.29 for the equipment that they took, would that sound about right to you?

A. The equipment, and part of the gas, oil, tires, and so forth.

Q. Whatever else they took?

A. That's right.

Q. Does that sound right to you?

A. That seems similar to it.

Q. Did you ever talk to an FBI man?

A. When?

Q. At any time.

The Court: Ever, at any time?

A. Yes, sir, I have talked to the FBI men.

The Court: About your testimony?

[fol. 892] The Witness: Yes.

By Mr. Hall:

Q. How many times?
A. Twice.
Q. What?

The Court: Twice.
The Witness: Twice.

By Mr. Hall:

Q. When was the first time?
A. I don't remember the month, but it was in 1946.
Q. You cannot even remember the month of this?
A. No.
Q. When was the next time?
A. Well, it was in December, 1947.
Q. Where?
A. In my home.
Q. On the first occasion did you go to the FBI man, or did he go to you?
A. He come to me.
Q. Did he go to you on both occasions?
A. That's right.
Q. Did anyone ever tell you that a certain government official at Henderson had complained about the cleanliness of your station?
A. No.
Q. Nobody ever said that to you?
A. No.

[fol. 893] The Court: In what direction is Henderson from this place?

The Witness: It is southeast, halfway between Boulder City and Las Vegas.

The Court: It is on the way to Boulder City?

The Witness: Yes.

By Mr. Hall:

Q. How far is Henderson from Las Vegas?
A. The road sign says 11 miles. My car registers 12 miles.

Q. Do you know a Mr. Ainsworth?
A. Not by name, no.

Mr. Hall: That is all.
The Court: Any redirect?

Redirect examination.

By Mr. Somerville:

Q. Do you recall what the gallonage was at your station when you commenced operations in 1945?
A. The total gallonage for 1945?
Q. Yes, do you know the average monthly gallonage of gasoline?
A. It run approximately 30,000 gallons a month.
Q. Do you know anything about the gallonage prior to the time you took it over?
A. I do.
Q. What was the gallonage at that time?
[fol. 894] A. Between fourteen thousand and fifteen thousand gallons per month.
Q. Did your gallonage increase or decrease during the ensuing period?
A. It increased up to July and August, 1947. Well, the peak was in June, 1946.
Q. How much gasoline did you pump per month then?
A. From June?
Q. At your peak.
A. At my peak?
Q. Yes.
A. Approximately 41,000 gallons.
Q. Did anything happen after that period with respect to other service stations opening up in the area?
A. They did.
Q. What was that?
A. There was five additional service stations opened up just below me, within a radius of one mile.
Q. And did your gallonage drop?
A. It did.
Q. After the last visit of Cles Turner regarding the termination of your contract, at the time that you did not give any definite answer, were there any other visits by representatives of the Standard Oil Company?
A. There was.

[fol. 895] Q. When did that occur?

A. That occurred the latter part of July, 1947.

Q. Who called?

A. There was this Phil and a representative from Bakersfield; I can't recall his name at the present time.

Q. At that time did you work out a termination agreement.

A. We did.

Q. Do you happen to know who took over the station after you left?

A. I do.

Q. Who was it?

A. It was a brother of the district manager in Las Vegas.

Mr. Somerville: That is all.

The Court: Any further questions?

Recross examination.

By Mr. Hall:

Q. On Thursday evening, May 6th, at a theatre in Las Vegas——

The Court: May 6th?

Mr. Hall: May 6th of this year, did you call Mr. Turner a son of a bitch, or a allude to him in those terms?

A. I did not.

Mr. Somerville: I object——

[fol. 896] By Mr. Hall:

Q. On that occasion did you state——

The Court: It is probably something to prove contradictory statements.

Mr. Somerville: This occurred after the event in question.

The Court: That does not matter. He may prove contradictory statements at any time when the witness is on the stand. You may show he said something different from what he has said now.

Mr. Somerville: That was just a preliminary question?

The Court: You did not give him a chance to develop what he meant to say. I anticipated, because I assume that is the object. Go ahead.

By Mr. Hall:

Q. Did you on that occasion——

The Court: What is the answer?

A. Truthfully, I never saw Mr. Turner in a theatre of any type.

By Mr. Hall:

Q. I say, did you say that concerning Mr. Turner?

A. No.

Q. Did you have a conversation on that occasion with an employee of the Standard Oil at Las Vegas, or anybody connected with the Standard Oil at Las Vegas?

A. Yes, I did.

Q. On the evening of May 6th of this year?

[fol. 897] A. I don't recall the date.

The Court: Fix the date first, and then ask what was said.

The Witness: Yes.

By Mr. Hall:

Q. Just before you came over here, wasn't it?

A. Yes, approximately ten days or two weeks ago.

Q. Had you been drinking on that occasion?

A. Sir?

Q. Had you been drinking on that occasion?

Mr. Somerville: I object to that question——

The Court: I will sustain the objection.

By Mr. Hall:

Q. You did have a conversation?

The Court: Let us find out whether it was derogatory or contradictory before you charge him with drinking.

Mr. Hall: I will withdraw the drinking.

Q. You had a conversation with the Standard Oil man on that occasion, did you?

A. A man I knew previously had been an employee of the Standard Oil. I don't know whether he is still employed by the Standard Oil.

Q. What is his name?

A. Abbott, I believe the name is.

Q. Did you tell Mr. Abbott on that occasion that you were coming over to Los Angeles to give the Standard Oil Com-
[fol. 898] pany a bad time?

A. I did not. I never even told him I was coming to Los Angeles. In fact, I merely spoke to the man and said, How do you do? We were at a snack bar, sitting in the theatre, and he asked me what I was doing, and I told him nothing.

Mr. Hall: That is all.

Mr. Somerville: That is all. May the witness be excused?

The Court: All witnesses are excused unless they are instructed to the contrary.

(Whereupon, a recess was taken until 2:00 o'clock p. m. of the same day.)

[fol. 899] Los Angeles, California, Thursday, May 13, 1948, 2:00 P. M.

Mr. Driscoll: The Government will call Mr. Phil Polsky.

PHIL L. POLSKY, called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name please?
The Witness: Phil L. Polsky.
The Clerk: Spell your first name.
The Witness: P-h-i-l.
The Clerk: Your middle initial?
The Witness: L.
The Clerk: Your last name?
The Witness: P-o-l-s-k-y.

Direct examination.

By Mr. Driscoll:

Q. Where do you reside, Mr. Polsky?
A. 2939 Northwest Cornell Road in Portland.
Q. With what company are you associated?
A. The Cristensen Oil Company.
Q. And what is your capacity?
A. General manager.
Q. What is the business of Christensen Oil Company?

A. The sale and distribution of lubricating oils, greases, [fol. 900] tires, batteries, and accessories.

Q. What brand name of grease do you carry and distribute and what is its source?

A. We distribute several brands. Our principal one, however, is the Battenfield Oil and Grease Company of Kansas City.

Q. And your lubricating oils?

A. We have many different varieties and brands. Amongst them are the Quaker State Real Penn; that is a Pennsylvania oil. We have several brands of our own.

Q. And what are the sources of those oil supplies?

A. Generally, we get some from Pennsylvania, West Virginia, California, are our principal sources of supply.

Q. And as to the tires what brand name tires do you use?

A. We represent the Miller Rubber Company of Akron, Ohio in Oregon and parts of Washington.

Q. And from where do you receive your supplies?

A. From Akron, Ohio and Los Angeles, California.

Q. And you testified, I believe, that you also sell and distribute batteries?

A. Yes, sir.

Q. What brand name batteries?

A. We have several brands. We have two brands that originate in California. We represent Prest-O-Lite, which [fol. 901] is manufactured in San Francisco; International, that are manufactured in Los Angeles; and a brand name of our own that is manufactured in Oregon.

Q. Do you carry a line of miscellaneous accessories?

A. Yes, sir.

Q. And what line is that and where is its source?

A. One of the lines that we represent is the Hollingshead Corporation of Camden, New Jersey. Our source of supply is, they maintain warehouses in San Francisco, California and ship to us from there.

Q. What brand name does the Hollingshead Corporation use?

A. Whiz is the brand name.

Q. With respect to the area in which you represent various producers, refiners and manufacturers will you tell the court what area of distribution you have for the various products and in what state or states you sell them?

A. That varies with the different products. Do you want me to go and explain each product?

Q. If you will, please.

A. Quaker State oil we represent in Portland and vicinity and parts of Washington; Miller Rubber Company, tires, in Oregon and Washington, both; Battenfield grease, Oregon, Washington and Idaho; our own brands of oils, in all three states, Oregon, Washington and Idaho; Whiz [fol. 902] products in all three states.

Q. And the batteries?

A. In all three states.

Q. What is the general sales organization that the Christensen Oil Company maintains?

A. We have six men salesmen on our payroll and they call on the trade generally in these three states.

[fol. 903] Q. To what class does your organization distribute? What retail outlets do you sell to?

A. We try to sell practically any user of those products, but principally they are service stations, garages, and commercial users of these products, and motor car dealers.

Q. Will you please, Mr. Polsky, explain to the Court the method and the manner by which you order products that you distribute, and the method and manner of their distribution and flow from the source to you, and to the ultimate sales outlet that you sell to?

A. We have such a variety of products that it is sometimes difficult for us to really gauge the amount of inventory on these different products, so we order against our contemplated sales; in some cases where there has been a little shortage of products against back orders; also contemplated sales in the area we operate. That is how we operate against what we anticipate in sales in those territories.

Q. Are shipments, for example, of your products made directly from San Francisco to the retail outlets?

A. Yes, they have been, in several cases. The Miller Rubber Company will ship direct to some of our customers. The Whiz products likewise, and the Prestolite batteries, they will do the same.

Q. As to the products that you receive in your organization and redistribute, how is that done?

[fol. 904] A. Through the efforts of our sales organization.

Q. Are they shipped by rail or by motor carrier or truck, or do you maintain a mobile sales force?

A. I can say both. We have our own fleet of trucks which makes deliveries generally within an area of 100 miles of Portland; but we also have a large truck that runs to Seattle and other areas, and then we use common carriers to a very large extent.

Q. How long have you been engaged in the business of distributing automotive products and accessories?

A. Are you referring to this company I am presently with?

Q. No, Mr. Polsky, your experience altogether?

A. 23 years.

Q. How long have you been with the Cristensen Oil Company?

A. About four and a half years.

Q. Are you familiar with the various automotive products of the kind that the Christensen Oil Company sells and distributes, as to their comparability or competitive quality to those sold and distributed by Chevron dealers selling the products of the Standard Oil Company?

A. Generally yes, I would say that I am.

Q. Are your products comparable to and competitive with those of the Standard Oil?

[fol. 905] A. I would say in quality they are comparable and in price comparable also.

Q. I understand your testimony to be then that they are entirely competitive with those of the Standard Oil Products?

A. Yes, sir.

Q. With respect to your source of supply, and the total volume of business which you do, do you have an adequate supply to meet all of your marketing requirements and needs?

A. Yes, sir, we do have at this time. The past couple of years there have been two items that we have been short of a number of times; that is, tires and batteries; but our supply of lubricating oils and greases has been continuous at all times.

Q. When, specifically, were you short of tires and batteries, and what, if you know, was the cause of that?

A. There was a general shortage which existed throughout our country. Other companies were in the same posi-

tion we were. There was a larger demand than the manufacturers were able to supply.

Q. Was that during the years 1943 and 1944, or when?

A. I would say the shortage existed to a slight degree in 1947—slightly. We had very little trouble, though, during the year.

Q. Do you have an adequate supply now to meet your [fol. 906] marketing requirements?

A. Yes.

Q. You testified, I believe, among other sources of outlets you sought to develop were service stations. Did you include the service stations that are known as Chevron stations operated by dealers of the Standard Oil Company?

A. Yes, sir, we have solicited their business.

Q. Have you been successful in placing your products with them?

A. I can only say this: Personally I have not solicited any of those stations. I can only say that I get reports that my sales department have given to me, and that is, we have had great difficulty.

Mr. Hall: Just a minute. That is objected to. Any reports of the salesmen would be hearsay.

The Court: Yes. The portion in which he relates what the salesmen told him is stricken.

By Mr. Driscoll:

Q. As a part of your duties and responsibilities in the position that you occupy with the Cristensen Oil Company, do you receive regular reports from the salesmen?

A. Every morning I have a report given to me, which shows each of the sales he makes the previous day.

Q. And based upon those reports, are they successful in selling the so-called Chevron stations operated by dealers [fol. 907] for the Standard Oil Company?

Mr. Hall: That is objected to as hearsay; no proper foundation laid, and not the best evidence.

The Court: This falls under the same rule I declared before; unless you have the reports you cannot give a summary. He has already stated, I think, that they have not succeeded in getting any custom from those stations. You will have to be satisfied with that, because he can't

give any more details, except by a summary of the reports, and the reports aren't here to be checked.

Mr. Driscoll: Very well, your Honor.

The Court: Objection sustained.

Mr. Driscoll: You may examine.

Mr. Hall: You may step down. No examination.

The Court: Call your next witness.

JOSEPH L. DONIGAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Joseph L. Donigan.

Direct examination.

By Mr. Driscoll:

Q. Where do you live, Mr. Donigan?

A. 3027 Northeast 60th Avenue, Portland.

Q. Portland?

[fol. 908] A. Portland, Oregon.

Q. What is your occupation?

A. Salesman.

Q. For whom are you salesman?

A. The Cristensen Oil Company.

Q. How long have you been employed by the Cristensen Oil Company?

A. Two and a half years.

Q. How long?

A. Two and a half years.

Q. Generally, what are your duties, Mr. Donigan, as a salesman for them?

A. Calling on service stations, garages, and commercial accounts.

Q. What area or territory is assigned as yours, or are you assigned any particular territory?

A. The west side of Portland, down town area, and surrounding small towns.

Q. In the course of your duties in calling on the trade, have you called on a service station called Laurelwood Chevron Service Station, near Gaston, Oregon?

A. Yes.

Q. What type of station is that? Whose products do they sell?

A. Standard Oil, Chevron station.

[fol. 909] Q. When did you first call on this service station?

A. About February of 1946.

Q. Do you know the name of the person who operates it?

A. No, I don't.

Q. Has it always been the same person that you have called on there?

A. Yes.

Q. Do you know what his duties or responsibilities are?

A. He runs a grocery store, and has two gas pumps dispensing gasoline and lubricating oil.

Q. At the time that you called on him, in June, of 1946, was it, did you offer him wares of the Cristensen Oil Company, its products?

A. Yes.

Q. Were you successful in selling him any products?

A. No.

Q. Did you call on him at a later period of time?

A. Yes.

Q. Will your state approximately when you called on him, or how frequently?

A. I called on him again around February of this year.

Q. At the time that you called on him in June, 1946, did you have any conversation with him respecting the products of the Cristensen Oil Company?

A. Yes.

[fol. 910] Q. Did you have any conversation with him respecting the products of the Cristensen Oil Company?

A. Yes.

Mr. Hall: Pardon me. I think he said February, 1946.

Mr. Driscoll: I am sorry.

Mr. Hall: Did you intend to put that in your question?

Mr. Driscoll: Let us clear it up. When did you first call on him?

A. It was sometime after the first of the year. It was in the first quarter of 1946.

[fol. 911] By Mr. Driscoll:

Q. Now at that time, Mr. Donigan, what was the physical layout of the service station?

A. It was a Mobil at the time, and he stated that he was moving into a new setup; he was putting in a new building and grocery store and service station and was changing over.

Mr. Hall: I move to strike the answer of the witness as hearsay and as not responsive to the question, stating facts, your Honor, as a part of his hearsay statement.

The Court: What was the question?

(Question read by the reporter.)

The Court: I will strike the answer. It calls for configuration, not what the man told you. If you saw any change being made or rebuilding, you may state it.

A. There was a new building being built.

By Mr. Driscoll:

Q. What of your products did you try to sell to him at that time, if any?

A. Quaker State.

Q. When you next called on him in February of 1948, I think you testified, what products was he then handling and what was the physical layout of his station?

A. Chevron gasoline and RPM motor oil.

Q. Did you offer him your products at that time?

A. Yes.

Q. And did you have any conversation with him at the time of this call relative to his taking on any of your [fol. 912] products?

A. Yes.

Q. Who was present at that time?

A. I and the store operator.

Q. Pardon?

A. I and the owner of the store.

Q. And whereabouts did the conversation take place?

A. In the store.

Q. What, if anything, did he say as to carrying a line of your products?

Mr. Hall: Objected to as hearsay.

A. He said that——

The Court: Overruled.

A. He said that he would like to handle our products but he was under a Standard Oil contract and could not.

By Mr. Driscoll:

Q. Did you call on him thereafter?

A. No.

Q. Are you acquainted with a service station at Beaverton, Oregon, operated by Schuld & Sweatland?

A. Yes.

Q. When did you first call on that station?

A. October of '47.

Mr. Hall: I didn't get it. Will you speak a little louder, please?

A. October of '47, approximately.

[fol. 913] Mr. Driscoll: At this time the Government asks to have marked for identification the documents produced by the defendants as item 18 of subpoena No. 1.

The Clerk: Government's 57 marked for identification.

Mr. Driscoll: Mr. Reporter, will you please read the last answer?

(Answer read by the reporter.)

Q. Whose products was this service station selling at that time?

A. Chevron gasoline and Standard oil.

Q. Did you attempt to sell them some of the products of Cristensen Oil Company at that time?

A. Yes.

Q. What products, specifically?

A. Quaker State.

Q. And were you successful or unsuccessful?

A. I was successful.

Q. Did you call on them at a later time?

A. Yes.

Q. Approximately when or specifically when, if you know?

A. Approximately about three weeks later.

Q. And did you attempt to sell them your products at that time?

A. Yes.

[fol. 914] Q. And were you successful?

A. As to the tires, a few tires and some batteries.

Q. At that time did you have a conversation with either Mr. Schuld or Mr. Sweatland, and which one, or both?

A. Mr. Schuld.

Q. Was anyone present besides you and Mr. Schuld?

A. No.

Q. Where did this conversation take place?

A. In the office of the service station.

Q. At that time what did the conversation that you had with Mr. Schuld consist of? What was said and who said it?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

Mr. Driscoll: You may answer.

A. I asked him about taking on our tires as a regular line, and at that time there was a slight shortage of tires coming in and he took on a few of them at that time, and stated that when Standard Oil got their tires in he would have to discontinue it.

Q. Have you called on him or them since that time?

A. Yes.

Q. When was your last call?

A. About two weeks ago.

Q. Did you attempt to sell them any of your products at that time?

[fol. 915] A. Yes.

Q. What products?

A. Quaker State.

Q. Pardon?

A. Quaker State.

Q. Were you successful or unsuccessful?

A. I was unsuccessful but he still had some supply left.

Q. Did you have any conversation with him at that time as to taking a line of your products?

A. Yes. I talked to him on tires and batteries again.

Q. And what——

A. He told me he couldn't on account of his Standard Oil contract.

Mr. Hall: Wait a minute, wait a minute. I object to the conversation as hearsay.

The Court: Overruled.

Mr. Driscoll: You may answer.

The Court: He has already answered.

Mr. Driscoll: I am sorry. Will you read it, Mr. Reporter?

The Court: He answered that he could not because of the Standard Oil Company, is that correct?

The Witness: That is correct.

By Mr. Driscoll:

Q. With respect of the tires and products that you testi- [fol. 916] fied you sold him, when and where did he place them for resale, if you know.

A. He placed the batteries under the counter out of view of the public. The oil was place- in an air compressor room off to the side of his lubrication room out of the sight of the public.

Q. Were there any other products?

A. And the tires were kept in the compressor room.

Q. Did the Cristensen Oil Company as distributors of these various products supply their retail outlets with advertising media?

A. Yes; we have signs, banners, pamphlets, and a lot of its national advertising.

Q. Did these service station operators accept some of your advertising media?

A. No.

Mr. Driscoll: At this time, if it please the court, the Government will move the admission into evidence of Exhibit marked for identification 57.

Mr. Hall: Defendants object to each and all of the documents offered on the grounds that they are irrelevant and immaterial.

Mr. Driscoll: I will call the court's attention to the dealer agreement TBA which is substantially that submitted by the defendant as exhibit 4, under date of February 14, 1946, [fol. 917] and a sublease of the same date, which is the defendants' production of Exhibit No. 5.

The Court: Overruled. It may be received.

The Clerk: 57 in evidence.

By Mr. Driscoll:

Q. Are you acquainted, Mr. Donigan, with a service station, a Chevron station which is located at St. Helens, Oregon in that part of the town called Station A?

Q. Do you know the name of the operator there?

A. No; I don't.

Q. Has it always been the same man there or have there been several?

A. Well, to the best of my knowledge it has been the same man. I have called there four times.

Q. Do you know what capacity he had in connection with the station, what his job was?

A. Well, he is the operator of the station.

Q. When did you first call on the station?

A. November of '46.

Q. And at that time what petroleum products and accessories, if any, were they selling?

A. Anti-freeze.

Q. I think you misunderstood me, Mr. Donigan. At the time you first called on them what petroleum products, [fol. 918] greases and oils, was this service station handling?

A. Chevron gasoline and Standard oil.

Q. Did you offer them the products of the Cristensen Oil Company?

A. Yes.

Q. Were you successful or unsuccessful?

A. Unsuccessful.

Q. Have you called on them since?

A. Yes.

Q. How many times?

A. Oh, about four times.

Q. And have you been successful on any of these calls?

A. No.

Q. Upon any of your calls at this service station have you had any conversation with the operator as to taking on the line of your products?

A. Yes.

Q. Do you recall the date of any of these conversations?

A. Well, the last time was in November of this last year, of '47.

Q. Who was there besides yourself and the operator?

A. Just myself and the operator.

Q. Where did it take place?

A. It took place in the station.

Q. Will you relate what that conversation was?

[fol. 919] Mr. Hall: Well, now, just a minute. That is objected to as hearsay, and on the further ground that no

foundation has been laid. We do not even know the name of the operator. We do not know the authority of the operator to bind anybody.

The Court: All right. You had better lay a foundation.

By Mr. Driscoll:

Q. The man that you called on at this station, you called on him regularly, did you?

A. I called on him regularly for four times.

Q. What, if you know, was his responsibility in connection with the station?

A. I asked for the manager and that is who he said he was.

Q. Have you ever sold him any of your products?

A. No.

Q. Do you know his name?

A. No; I don't.

Q. Where is the location and address of this station?

A. It is Station A, St. Helens.

Q. And when, approximately, if at any time, have you had a conversation with him relative to the purchase of your wares?

A. In November of '47.

Q. Where and who was present at that conversation?

A. The station operator and myself, in the station [fol. 920] office.

Q. Will you relate to the court what that conversation was about, what was said relative to the purchase of your products by this operator?

Mr. Hall: Now, I press my objection, your Honor, that I made before, that this is hearsay and that no proper foundation has been laid; and, on the further ground that there is no showing that there was any contract involved with this operator. I take it that none of this evidence is material with respect to a station with which there is no contract.

Mr. Driscoll: The foundation as to identity, your Honor, of the operator whom this witness testified he called upon, whose conduct and actions were in every respect consistent with being the manager and the operator of the station. He does not happen to know his name.

Mr. Hall: Counsel misses the point, I think. Unless there was some contract with the Standard Oil Company, between Standard Oil Company and this operator, then the entire evidence is irrelevant and immaterial. We were not

preventing him from selling anything to anybody. And the operator's own opinion or statement as to the reasons for not selling would be entirely immaterial.

The Court: Well, I think, beyond actual contract, if despite the absence of a written contract, the designation of [fol. 921] the station as a Chevron station, the result of the fact in an understanding that the person who was using that name was required to deal exclusively with the Standard Oil products, we have the situation adverted to in the Salt case, that we are dealing with a possibility and understanding resulting in that having the result of restraining trade.

Mr. Hall: Yes; but he is asking for the statement of the dealer. If the dealer gives his opinion, as your Honor has ruled that he may——

The Court: That is right.

Mr. Hall: —to show his motive——

The Court: That is right.

Mr. Hall: —that would be immaterial in this case where there is no contract or agreement with Standard Oil Company. On the other hand, if the dealer says, "I did not buy their products because I had an agreement with Standard Oil Company," then that trespasses upon your Honor's ruling that the dealer may not state the facts and that the facts of that case would be hearsay.

The Court: Well, perhaps we are talking at cross purposes.

Mr. Driscoll: May I be heard?

The Court: If the fact be established that this was a Chevron station, limiting the inquiry to the same situation, you have a right to ask the question, first, as to whether [fol. 922] the man refused to deal; and second, what reason he gave for the refusal to deal, not as establishing the fact but as establishing a motive for not dealing, regardless of the contract. I will overrule the objection.

Mr. Driscoll: Will you read the question to him, Mr. Reporter?

(Question read by the reporter.)

A. I tried to interest him in Quaker State motor oil. He said he had calls for it but that he couldn't buy on account of his Standard Oil contract.

Mr. Hall: Now, if the court please, that does give point to my objection. He said that he could not buy because of the Standard Oil contract. Now, there we are bringing into

hearsay a fact which should be proved in another way, namely, that there was a contract, and the basis has not been laid.

The Court: Let us see if this is preliminary or whether he can establish there was a contract.

Mr. Driscoll: If your Honor please, the Government subpoenaed from Standard Oil Company Service Station A documents at St. Helens, Oregon, and Standard Oil Company returns three stations' documents with Standard Oil Company at St. Helens, Oregon, none of them identified as Station A. We now have a contract which I propose to have marked for identification, and submit from the address [fol. 923] and testimony to be adduced from this witness that this is the service station, but he does not know the name of the contractor.

Mr. Hall: Have you got the address on that document?

Mr. Driscoll: Route 1, Columbia County, St. Helens, Oregon. May I have that marked?

The Court: I happen to know St. Helens, Oregon. When I sat in Oregon in 1942 I used to spend week-ends at a big ranch, a big cattle ranch right above it that a Los Angeles man owned at the time, Mr. Crowell, and the place is rather small to have a large number of stations. I think it might be possible to identify it.

The Clerk: Government's 58 for identification.

Mr. Hall: I still press my motion to strike the answer of the witness, your Honor.

The Court: I beg pardon?

Mr. Hall: I press my motion to strike.

The Court: I will deny it, or I will reserve a motion to strike later on if there is no identification of the station.

Mr. Driscoll: As to counsel's argument on the contract feature, before your Honor rules at any event on that, I should like to be heard about it.

The Court: I have already indicated that once it was shown there is a station, for the same reason, that whether the contract is absolutely produced or not, there can be a lower understanding. The Government is not bound by any [fol. 924] allegations in the complaint here to prove the existence of a contract in every case. There is a tacit understanding which follows from the designation of the station as a Chevron station that may be inquired into.

[fol. 925] The Court: What are we waiting for, gentlemen?

Mr. Hall: We are examining the documents which counsel had marked, and intend to offer.

Mr. Driscoll: I will continue. I will ask to have marked for identification the documents produced by the defendants under Subpoena No. 1, Item 20.

The Clerk: Government's Exhibit 59 marked for identification.

By Mr. Driscoll:

Q. Mr. Donigan, are you acquainted with the service station operated on Columbia Boulevard in St. Helens, Oregon?

A. Yes.

Q. A Chevron station?

A. Yes.

Q. Do you know the name of that operator?

A. No, I don't.

Q. When did you first call on him?

A. I called on him in November, of 1946.

Q. When you called on him, did you notice any of his markings or any advertisements that are displayed there?

A. Yes, Chevron.

Q. Did it display for sale any advertisements of particular lines of motor accessories?

A. It had the Dupont line, Atlas tires and batteries, and Standard Oil.

[fol. 926] Q. When you first called on that station did you offer, or attempt to sell them some of your products?

A. Yes.

Q. Were you successful?

A. No.

Q. Did you subsequently call on them?

A. Not on my regular calls. I stopped maybe every fourth or fifth trip down there.

By Mr. Hall:

Q. What was the last station?

A. Columbia Boulevard in St. Helens, Oregon.

By Mr. Driscoll:

Q. At any of the calls that you made on this Chevron station on Columbia Boulevard at St. Helens, did you have a conversation with them as to any of your products?

A. Yes.

Q. Do you recall the date of the first such conversation with them?

A. On my first call.

Q. When was that?

A. November of 1946.

Q. Who was present at this call? Where did it take place?

A. It took place in the station office.

Q. What, if anything, was said by the operator relative to the taking of your line of products?

[fol. 927] Mr. Hall: Just a minute. I object to that as incompetent, irrelevant and immaterial; no proper foundation laid; and hearsay.

The Court: Overruled.

The Witness: At that time there was a slight shortage in Pennsylvania oil. I tried to sell him real Penn motor oil. He was out of Pennsylvania. He said he could not buy it on account of his Standard contract.

Q. With respect to the station you have testified to being located as Station A, St. Helens, did you observe whether or not it carried any particular advertising of automotive products?

A. Yes, it carried your Atlas line and your Chevron gasoline, and your Standard Oil, all over the station.

Q. I hand you what has been marked Government's Exhibit 58, consisting of petroleum products and equipment, dealer agreement TBA, between Iris Wolfe and the Standard Oil Company of California, and an assignment from Warren Guyer to Iris Wolfe of lease, sublease and dealer agreement and distributor at the address Route 1, Columbia County, St. Helens, Oregon, and ask you whether or not——

Mr. Hall: Just a minute before you show that to him. Don't show it to him yet. I have an objection as soon as you finish your question.

By Mr. Driscoll:

Q. Whether or not you recognize the address as being the station to which you testified is Station A.

[fol. 928] A. Route 1 is a highway going through Station A, St. Helens, that is right.

Q. To the best of your knowledge is this the distinction that you make when you testified you attempted to sell, and the conversation you had regarding your products with the operator at Station A?

A. Yes.

Mr. Driscoll: The Government will move the admission of Exhibit 58 for identification.

Mr. Hall: Just a minute. May I take the witness on voir dire before the ruling is made?

The Court: I don't usually do it, but I will allow you in this case, because it is a question of identifying a particular locality.

By Mr. Hall:

Q. How many pumps did this Station A you refer to at St. Helens have?

A. That I can't say for sure.

Mr. Hall: What is your best recollection?

A. My best recollection is, three pumps.

Q. Your best recollection is three pumps?

A. Yes.

Mr. Hall: I object to the offer of the document in evidence upon the ground that it is incompetent, irrelevant and immaterial; that no proper foundation has been laid, and [fol. 929] that this document itself indicates that the station referred to in the document has two pumps instead of three pumps.

The Court: The objection will be overruled.

The Clerk: Exhibit 58 admitted in evidence.

By Mr. Driscoll:

Q. The Government will move the admission in evidence of Exhibit 59 for identification, consisting of dealer agreement, with the typed modification, substantially the same as that submitted by the defendant as Exhibit 4, dealer agreement, TBA, under date of April 25, 1947, from Edward E. Brown and the Standard Oil Company, with respect to the property at 15th and Columbia Boulevard, St. Helens.

Mr. Hall: Objection is made upon the ground that each and all of the documents are irrelevant and immaterial and incompetent, and that no proper foundation has been laid.

The Court: Overruled.

The Clerk: 59 in evidence.

Mr. Driscoll: The Government will have marked for identification the document produced by defendant under subpoena No. 1, Item 21.

The Clerk: Government's Exhibit 60 marked for identification.

By Mr. Driscoll:

Q. Are you acquainted, Mr. Donigan, with a garage called Carlson's Garage, Oswego, Oregon?

A. Yes.

Q. Have you called on it and offered your wares to them?

[fol. 930] A. Yes, sir.

Q. About when was your first call on them?

A. February of '46——'47, rather.

Q. And at that time what petroleum products were they handling, if you know?

A. They were handling Chevron gasoline, and Standard Oil, Atlas batteries and tires.

Q. Did you offer to sell them any of your products?

A. Yes.

Q. What items?

A. Batteries, tires and oil.

Q. Were you successful?

A. I was successful in selling him oil.

Q. How much oil did you sell him?

A. I sold him about, the first time, around 50 gallons.

Q. Where, if you know, did they store and display this oil?

A. He stored it in a store room off of one end of his garage, out of sight.

Q. Will you explain to the Court the layout of the service station, and the garage, and the operation he has there?

A. It is a super service station, with gas pumps in front, and the motor dealer connects onto one end of it, and a [fol. 931] garage is on the other end of it: a body and fender works.

Q. Did you call on him at a later date?

A. Yes.

Q. Were you successful on this later call in selling him you products?

A. No. I sold him batteries later, but he had to discontinue them.

Q. Do you know what he did, or where he displayed the batteries that you sold him?

A. He put those in a store room back of his office.

Q. Upon any of these times that you called upon him, to sell him your products, did you have any conversation with him about taking on your line?

A. Yes.

Q. Do you recall the date of any such conversation?

A. In February, of this year.

Q. Where did this take place, and who was present?

A. Mr. Wid Hunter, the Quaker State Refinery representative was present along with Mr. Carlson and myself, and it took place in the garage.

Q. About what date was the last time you were successful in selling him the oils that you spoke about?

A. I sold him the oil once, and that was all.

Q. Will you relate the conversation that you had with Mr. Carlson at the time and place and persons presents [fol. 932] that you testified to, and what it was——what the conversation consisted of?

Mr. Hall: Objected to a hearsay.

The Court: Overruled.

A. We talked to him on Quaker State, and the taking on of our regular line of tires, and he stated at the time he had too much to risk under his Standard Oil contract.

Mr. Hall: May I have the answer read?

(Answer read by the reporter.)

By Mr. Driscoll:

Q. Have you called on him since that time?

A. Yes.

Q. Have you been successful in selling him any of your products?

A. No.

Q. Have you called on a service station or garage located at 1st and A Streets in Oswego, Oregon?

A. Yes, Bender Motors.

Q. What is the name of it?

A. Bender Motors.

Q. What petroleum products did it sell?

A. Standard Oil.

Q. When did you first call on Bender Motors?

A. It was the early part of '46.

Q. Do you know the name of the man that was in charge [fol. 933] of the operation there?

A. Mr. Bender.

Q. At that time were you successful in selling him any of your products?

A. Yes, Quaker State.

Q. How much did you sell him, if you remember?

A. Five cases.

Q. Do you know what, if anything, he did as to displaying it or storing it?

A. He did not display it. He stored it in his parts room.

Q. I beg your pardon?

A. He stored it in his parts room.

Q. In his parts room?

A. Yes.

Q. How do you mean? Is that separate?

A. He has a motor parts department there. He stored that in there. He is a motor dealer.

Q. Did you call on him at any subsequent time?

A. Yes.

Q. When was the next time you called on him?

A. I called on him about three weeks later.

Mr. Driscoll: The Government will ask to have marked for identification on Item 22, produced by the defendant under Subpoena No. 1.

[fol. 934] The Clerk: That is Government's 61 for identification.

Mr. Driscoll: Consisting of petroleum products equipment agreement between Bender Motors, dated March 9, 1946, and the Standard Oil Company, miscellaneous products.

Q. Upon this second visit did you attempt to sell Mr. Bender further products?

A. Yes.

Q. Were you successful?

A. No, he told me he had to discontinue, because he had signed the contract with the Standard Oil Company.

Q. Did you call on him subsequently?

A. I have called on him since, and have gotten the same story.

Mr. Hall: I move to strike the last part of the answer of the witness as to what Mr. Bender said, on the ground that it is hearsay. I had no opportunity to object before the question was answered.

The Court: Yes. The objection will be considered as made before, and it is overruled.

By Mr. Driscoll:

Q. Since the first call, and sale of oil to Mr. Bender, to which you have testified, have you at any time subsequently been successful in selling him further products?

A. No.

Q. Are you acquainted with a service station called the [fol. 935] Haynes Service, on Northwest Thurman Street in Portland?

A. Yes.

Q. When did you first become acquainted with them?

A. In November of '46.

Q. When?

A. Around November of '46.

Q. What petroleum products were they selling at that time?

A. Standard Oil, Chevron gasoline.

Q. At that call were you successful in selling them some of your products?

A. Yes.

Q. What did you sell them, what item?

A. I sold him a barrel of real Penn motor oil.

Q. Do you know what, if anything, he did as to its storage and display?

A. He stored it out in back. His service station is a large station with a parking lot clear around it. They drive around it. He has a repair shop to the rear, and a store room, and he stored it in that store room in the rear of the station.

Q. Have you called on him since that time?

A. Yes.

Q. Do you call on him regularly?

A. I haven't called on him regularly for about six months. [fol. 936] I hit him intermittently.

Q. Have you continued to sell him oil or any other products of the Cristensen Oil Company?

A. I have sold him batteries.

Q. When did that sale occur, if you remember?

A. That was in the latter part of 1947.

Q. Does he still continue to buy oil from you?

A. No.

Q. When did he discontinue, if you remember?

A. After the first barrel.

Q. Do you recall when, approximately, or specifically, if you can remember, was the first time that you called and he declined to purchase oil?

A. About three weeks after I had sold him the first barrel in November. In other words, in December.

Q. Did you have a conversation with him that time as to furture purchases?

A. Yes.

Q. Who was present, and where did this conversation take place?

A. The conversation took place in his office, in front of the station.

Q. Was there anyone else besides you and he there?

A. No, just I and Mr. Haynes.

Q. What was said, if anything, by him?

Mr. Hall: Objected to as hearsay.

[fol. 937] The Court: Overruled.

A. I asked him if he would not continue handling the Real Penn motor oil. He said Standard Oil was getting their Pennsylvania oil back in again, and he would have to discontinue, on account of his contract.

Q. Have you been successful in selling him since that time?

A. No oil.

Q. Have you sold him any further batteries?

A. No.

Q. When did he discontinue buying from you?

A. The latter part of this last year, '47.

Q. At the time he discontinued or declined purchasing batteries from you, did you have a conversation with him?

A. I had a conversation with him just about four days ago in regard to batteries and tires.

Q. When?

A. Four days ago.

Q. Where did that conversation take place?

A. In his lot, in front of the station.

Q. Who was there?

A. Mr. Haynes and myself.

Q. What was said by Mr. Haynes at that time, if anything, as to taking tires and batteries?

Mr. Hall: Objected to as hearsay.

[fol. 938] The Court: Overruled.

A. He said he could not handle our products on account of his Standard Oil contract.

By Mr. Driscoll:

Q. Was anything further said by him as to your products?

A. No.

Q. Did he express any dissatisfaction with them?

A. He said he would like to handle the products.

Q. With respect to any of these conversations that you have testified to with dealers discontinuing your products, have any of them expressed dissatisfaction with your products?

A. With our products? No.

Mr. Driscoll: The Government will ask to have marked for identification, the documents submitted by the defendants as Item 24, Subpoena No. 1, consisting of dealer agreements, assignments, distributor agreements, and lease, between Frank W. Haynes, 2429 Northwest Thurman Street, Portland, and the Standard Oil Company, under date—the dealer agreement October 1st, 1945, substantially, with the typewritten alterations, the same as Government's Exhibit 4.

The Clerk: Government's Exhibit 62 for identification.

By Mr. Driscoll:

Q. Are you acquainted with a service station located at Scappoose, Oregon, called the Hal Gilbert Chevron service station?

[fol. 939] A. Yes.

Q. When did you first become acquainted with that business?

A. When it was the Jacobson service station, in October of last year.

Q. The Jacobson service station?

A. Yes.

Q. Since that time has it changed hands?

A. It has changed hands, yes.

Q. When you first called at that address, that station, state whose products they were handling?

A. Chevron gasoline, Standard Oil, Dupont accessories, and Atlas batteries and tires.

Q. Were you successful in selling the Jacobson station any of your products?

A. Yes.

Q. What did you sell them?

A. I sold him ten batteries.

Q. Anything else?

A. Not at that time.

Q. When was the next time you called on him, if you called again?

A. I called again in November, and it had changed the latter part of November.

Q. Do you know who the new owner was?

[fol. 940] A. Hal Gilbert.

Mr. Driscoll: The Government will ask to have marked for identification documents submitted by the defendants as Item 25, of Subpoena No. 1, consisting of dealer agreement between Hal S. Gilbert and the Standard Oil Company of California, dated November 26, 1947.

The Clerk: Government's 63 marked for identification.

Mr. Driscoll: That TBA dealer agreement is the same as that which is in evidence as Exhibit 4, with slight modifications.

The Court: You are not offering it right now?

Mr. Driscoll: No.

Q. At the time of your first call on Mr. Gilbert, when he had taken over the operation of this station, did you attempt to sell him your products?

A. Yes.

Q. Were you successful in selling him?

A. I sold him a case of Motor Rhythm, motor tuning up oil.

Q. About when was that, if you recall?

A. That was the latter part of November.

Q. And at that time did you have any conversation with him as to other lines or that line?

A. Yes, I talked to him on Quaker State tires and batteries.

[fol. 941] Q. Who was present when you talked to him, and where did this take place?

A. In Mr. Gilbert's own office.

Q. What was said by him relative to taking your wares?

A. He told me he could not handle our products on account of his Standard Oil contract.

Q. Did he say anything else with respect to the oil?

A. The valve oil——

Mr. Hall: I object to that as hearsay.

The Court: Overruled.

A. The valve oil was not available from Standard Oil: that type of valve oil.

By Mr. Driscoll:

Q. Have you called on him since that date?

A. Yes.

Q. When was your last call?

A. The last call was in March of this year.

Q. This year?

A. Yes.

Q. Were you successful in selling him any of your products on that call?

A. Yes, I sold him a case of Zorbit.

Q. Did you attempt to sell any tires?

The Court: Explain what that is.

The Witness: That is a chemical used for taking water [fol. 942] out of gasoline, that gets into the gasoline.

By Mr. Driscoll:

Q. Did you attempt to sell him any tires, batteries, or your lubricating oil?

A. Yes.

Q. When did you say this was?

A. This was in March.

Q. Did you talk to him at that time, or have some further conversation about taking your line?

A. Yes.

Q. Who was present, and where did it take place, and what was said?

A. In his office. Mr. Gilbert and I only were present. He told me he could not handle our other lines because the batteries and tires were available under his contract with the Standard Oil.

Q. Are you acquainted with a service station at 1205 Southwest Tenth Street, Portland, Oregon, the Bramwell's Service?

A. Yes.

Q. When did you first call on this station?

A. I first called about two years ago on Mr. Bramwell. That would be March or June; somewheres around in there, 1946.

Q. At that call did you attempt to sell him your line of merchandise?

[fol. 943] A. Yes.

Q. Were you successful?

A. No.

Q. When was the last time you called on Mr. Bramwell?

A. Four days ago.

Q. Since the date of your first call and this last call have you attempted to sell him frequently or infrequently?

A. I have been selling him frequently on oil, Quaker State, and some bulk oil, and his tires and batteries, he has discontinued.

Q. When did you first sell him oil or tires or batteries?

A. I first sold him oil last summer, the summer of '47.

Q. When did you first sell him tires?

A. I first sold him tires about November of '47.

Q. At that time, the summer of '47, when you sold him oil, did you have any conversation with him relative to taking your oil?

A. Give me the question again, please.

Q. Will you read it, Mr. Reporter?

(Question read by the reporter.)

A. Yes.

By Mr. Driscoll:

Q. Who was present, and where did it take place?

[fol. 944] A. It took place in his station?

Q. Who was there?

A. Mr. Bramwell and myself.

Q. What was said?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. He told me he had calls for Quaker State, and would handle it, but he had to keep it out of sight; he could not advertise it. He has cabinets, and he puts it in underneath the window sills, in the station.

Q. At the time that you first sold him tires in November of '47, what, if anything, was said by him, and who was present, and where did the conversation, if any, take place?

A. The conversation took place in his station, and at that time some of the sizes of tires were not available from Standard Oil, and he took a dozen tires from me.

Q. At the time of your last call, four days ago, did you attempt to sell him further of your products?

A. Yes.

Q. Were you successful?

A. No, he was still supplied from the last time I was there.

Q. I did not hear.

A. He still had an adequate supply.

[fol. 945] Q. What kind of tires were they?

A. Miller tires.

Q. Did you have any conversation with him at that time as to your line of products?

A. Yes.

Q. Where did he have these Miller tires? Did he have them displayed?

A. He had them up on a rack. They were not on display, like the display of his Atlas. He has those up in the window. These were up in the tire rack, next to the ceiling.

Q. Did he have Atlas tires too?

A. Yes, some sizes.

Q. Where did your conversation with him take place, and who was present?

A. Four days ago, we had our conversation. He was washing a car back of the station. It took place in the parking lot.

Q. Was anyone else there?

A. No.

Q. What was said by him as to continuing or discontinuing your line of merchandise?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. He said he would have to discontinue our tires and [fol. 946] batteries, due to the fact that he had too much invested, and did not want to get kicked out.

Mr. Driscoll: The Government moves the admission of Exhibit 63 for identification, being dealer's TBA agreement between Hal Gilbert, and the Standard Oil.

Mr. Hall: Objected to as irrelevant and immaterial.

The Court: The objection will be overruled. I will admit it.

The Clerk: 63 in evidence.

(Short recess.)

[fol. 947] By Mr. Driscoll:

Q. Now, Mr. Donigan, in the course of your duties selling for Cristensen Oil Company did you call on a Chevron service station at 13th and Salmon, Portland, Oregon?

A. Yes.

Q. When did you first call on this station?

A. Just prior to the first of the year—about November, October or November of this last year, '47.

Q. 1947?

A. Approximately.

Q. Do you know the name of the man who was then operating that station?

A. No; I don't.

Q. Did you call on him more than once?

A. Yes.

Q. Did you always contact the same man?

A. Yes.

Q. Who did you talk to there?

A. I talked to the operator of the station.

Q. When you first called on him did you attempt to sell him your tires, batteries, and tubes?

A. Yes.

Q. Were you successful?

A. No. I did sell him some Quaker State, though.

Q. What, if you know, did he do with the Quaker State? [fol. 948] A. He put it in his store room out of sight of the public.

Q. How long afterwards did you call on him again, if you called on him again?

A. I called on him again in about three weeks after the first time.

Q. Did you attempt to sell him any more of your products?

A. Yes.

Q. What products?

A. Quaker State tires and batteries.

Q. Did he buy any of them?

A. No.

Q. At the time of this call did you have a conversation with respect to your line of goods?

A. Yes.

Q. Where did that take place and who was present?

A. Just I and the station man himself. It took place in his lube room, and he told me he would have to discontinue——

Mr. Hall: Just a minute. I move to strike the last part of the answer of the witness to give me an opportunity to object.

The Court: All right.

Mr. Hall: I object—are you going to ask him for conversation?

[fol. 949] Mr. Driscoll: I am going to ask him a question, and then you may object, Mr. Hall.

Q. What conversation did you have with him and what was said by him?

Mr. Hall: Now that is objected to as irrelevant and immaterial, incompetent, no proper foundation laid, and hearsay.

The Court: Overruled.

Mr. Driscoll: You may answer.

A. He told me that he could not handle the Quaker State any longer because he was risking what his investment was in the station due to his Standard Oil contract.

Q. Did he say anything relative to your tires and batteries?

A. He said he could not handle them.

Q. Have you called at that address since that time?

A. Yes. I called there two weeks ago.
Q. Has there been any change in the station?
A. That station has changed to a Shell unit now.
Q. Do you know who now operates it?
A. Plogge & King.
Q. Who are Plogge & King?
A. They have a series of parking lots in downtown Portland, and they have an associated lot just across—around the block, rather, from the Standard or ex-Chevron sta-
[fol. 950] tion.
Q. Do you sell Plogge & King your products?
A. Yes.

Mr. Hall: Just a minute. That is objected to as irrelevant and immaterial, no proper foundation laid.
The Court: Overruled.
A. Yes.

Mr. Driscoll: The Government now moves the admission of Exhibits 60 marked for identification, consisting of a TBA agreement dated August 1, 1945, between Standard Oil of California and Ralph B. Carleson, service station at Oswego, Oregon; Exhibit 61 marked for identification, consisting of a petroleum and equipment agreement substantially the same as that which is Government's Exhibit 3 already in evidence, and containing a provision for a bill of sale of the installed property providing the operator Bender abstains from the sale or handling of any products except Standard Oil; Exhibit 62 marked for identification, being a TBA agreement dated October 1, 1945, between Standard Oil and Frank W. Haynes for the service station at 2429 N. W. Thurman Street; and a distributor agreement dated October 5, 1941 between one Hannahs and the Standard Oil, the assignor of the present operator Haynes.
Mr. Hall: Each and all of the documents in each and all the offers are objected to on the grounds that they are
[fol. 951] irrelevant, immaterial, and that no proper foundation has been laid.
The Court: Overruled.

By Mr. Driscoll:

Q. Now, Mr. Donigan, at the time of your—
The Court: Just a moment until I look at these.

Mr. Driscoll: Excuse me, your Honor.

[fol. 952] The Court: All right; the objection is overruled. They may be received and marked——

The Clerk: 60, 61, and 62 in evidence.

The Court: 60, 61 and 62.

By Mr. Driscoll:

Q. Mr. Donigan, with respect to all of these various service stations that you have testified to and the conversations that you have had with the operators, at any time has any of them expressed any dissatisfaction of the products that they have purchased from you or which you have offered to them?

Mr. Hall: Objected to as no proper foundation laid and too general.

The Court: Overruled.

A. No.

Mr. Driscoll: You may cross examine, Mr. Hall.

Cross-examination.

By Mr. Hall:

Q. How many separate retail outlets did you solicit for the sale of your merchandise in the year 1946?

A. Well, to the best of my knowledge I have about 300 accounts.

Q. Now, I am asking you the number of separate outlets that you solicited. I am not asking you whether you sold them or not, but I am simply asking for the ones that [fol. 953] you solicited.

A. I solicited every station in town.

Q. Well, how many was it?

A. That number, sir, I can't give you.

Q. Well, approximately?

A. Approximately 20 calls a day.

Q. 20 calls a day?

A. Yes.

Q. Approximately how many separate service stations did you solicit during the year?

A. I would say, oh, roughly 2500.

Q. How many did you sell?

A. That is counting repeats.

Q. What?

A. That is counting repeat calls.

Q. No; that is not what I asked you. How many separate and distinct retail outlets, approximately, did you solicit during the year 1946?

A. Oh, approximately 500 stations I would say.

Q. And how many did you sell?

A. Well, I got 300 regular accounts.

Q. And during the year 1947 how many separate retail outlets did you solicit?

A. Approximately the same amount.

Q. And how many did you sell?

[fol. 954] A. Approximately the same.

Mr. Hall: That is all.

Mr. Driscoll: The Government will call Mr. William Smith.

William E. Smith, called as a witness by and on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please.

The Witness: William E. Smith.

The Clerk: How do you spell your last name?

The Witness: S-m-i-t-h.

Direct examination.

By Mr. Driscoll:

Q. Where do you reside, Mr. Smith?

A. 7833 Southeast 36th Avenue, Portland, Oregon.

Q. What is your occupation?

A. Territorial salesman for the Pennsylvania Tire & Rubber Company at the time that I was subpoenaed. At the present, I am not.

Q. What is your present occupation?

A. I am now territorial representative for the Seiberling Rubber Company located here in California.

Mr. Hall: Pardon me a minute. What was the name of that rubber company?

[fol. 955] The Witness: Last one, sir?

Mr. Hall: No; the first one.

The Witness: The Pennsylvania Rubber Company.

Mr. Hall: Thank you.

By Mr. Driscoll:

Q. What is the business of the Pennsylvania Rubber Company?

A. Their business is the manufacturing and selling of tires of their own manufacture and of batteries that they buy and sell as a jobber.

Q. How long have you been in the business of selling tires and batteries?

A. Approximately 23 years.

Q. Has all of that time been with the Pennsylvania?

A. No, sir.

Q. At the time that you were factory representative of the Pennsylvania Rubber Company of Portland what territory did you have supervision over?

A. Oregon, Washington, the western half of Montana and the Panhandle of Idaho.

Q. What brand name are your tires distributed and sold under?

A. Under the Pennsylvania name, Pennsylvania Rubber Company.

Q. And where are they manufactured?

A. In Jeannette, Pennsylvania.

[fol. 956] Q. About how many distributors do you have in the territory which you have testified to?

A. Pardon me a second. Seven.

Q. How were they distributed; how were they disposed over the territory?

A. I had one in Portland who covers about practically the entire State of Oregon and the southern half of Washington; one located in Yakima, covering the trading area around within an area of about 75 miles of Yakima; one in Wenatchee, covering two counties; one in Spokane, covering about five counties of Washington and the Panhandle of Idaho; one in Missoula, Montana; and one in Kalispell, covering the immediate trading areas.

Q. What level of trade or distribution does the Pennsylvania Rubber Company and/or its distributors seek as outlets for its products?

A. The distributors seek to sell their merchandise from a wholesale standpoint to service stations, garages, and any other type of an outlet that would be selling again to the retail trade.

Q. Are you familiar with the manner in which those distributors solicit or canvass business, place their orders, and with respect to which orders they are billed and shipped to them?

A. Our distributors, my distributors that I would sell [fol. 957] would place their orders with me, based upon their inventory and their automobile sales, both, from a commercial, wholesale and retail standpoint for the current buying season, meaning by that, figuring about a sixty-day turnover.

Q. What would you do with those orders?

A. They would be mailed to my branch in Los Angeles for shipment.

Q. How are the shipments made from the branch or factory?

A. In some cases the shipments are made from our Los Angeles branch; in other cases it would be direct from the factory, depending upon the size of the order; in some cases from a warehouse deal we would have located in Portland, Oregon. That would depend entirely upon the size of the order.

Q. And upon the receipt of any tires by you at Portland what do you do then with them?

A. In turn those tires were delivered to our distributors.

Q. Do you of your own knowledge know whether or not your distributors solicit service stations called Chevron service stations operated by dealers selling the petroleum products and other products of Standard Oil of California?

A. I would say that the distributors solicit business [fol. 958] from all types of stations, among which would be Chevron stations.

Q. Do you of your own knowledge know whether or not they are successful or unsuccessful in selling this market?

A. To my knowledge, in my territory, there isn't any Chevron stations handling any Pennsylvania products of any kind.

Q. And by Pennsylvania products you mean?

A. I mean tires, tubes, and our batteries, which are our main products.

Mr. Driscoll: That is all. You may cross examine, Mr. Hall.

Cross-examination.

By Mr. Hall:

Q. Your territory included Oregon, Washington, Idaho and what else?

A. Oregon, Washington, the Panhandle of Idaho; that includes Lewistown, Idaho north to the Canadian line a little strip there between Washington and Montana, and the northwest part of Montana, including Missoula and Kalispell.

Q. How many years were you in charge of that territory for Pennsylvania Rubber Company?

A. Six months.

Q. Six months?

[fol. 959] A. That is correct; yes, sir.

Q. What was your position before that six months period?

A. 11 years with the American Tire Machinery Company.

[fol. 960] Q. With what?

A. The American Machinery Company.

Q. So that your testimony with reference to the solicitation of service stations has to do with that six months' period, is that correct?

A. At the present time, yes. But prior to the American Machinery Company I was with the Goodyear Tire & Rubber Company. That's been better than eleven years ago.

Q. How many years were you with Goodyear?

A. Nine years.

Q. In what position?

A. The same type of work, territory salesman.

Q. Was it the same territory?

A. No, it was seven counties in the middle part of the State of Washington, with headquarters in Wenatchee, Washington.

Q. You do your business for the Pennsylvania Rubber Company entirely through those seven distributors?

A. That is correct.

Q. Did the distributors purchase the goods from you, or do they act as your agents?

A. I purchased no merchandise from the factory upon solicitation of orders by me.

Q. During the six months' period, and in that area, how

many retail outlets, separate retail outlets were solicited
[fol. 961] under your supervision for the Pennsylvania Rubber Company?

A. I don't quite understand your question. Do you mean as distributors or dealers, for my distributors?

Q. I am talking now of retail dealer outlets.

A. I could not give you a very definite answer, because I do not work that often with my distributors to know how many calls they would make in separate outside dealer locations.

Q. Can you tell me approximately?

A. No, that would be pretty hard to answer also.

Q. How many dealer outlets did you sell Pennsylvania tires to while you were with the Pennsylvania Rubber Company?

A. I only sold to distributors; I sold the seven distributors.

Q. How many outlets did they distribute to?

A. That again I cannot answer definitely for you, on account of in Walla Walla we had approximately four, where we carried Associate dealers. The Spokane distributor had approximately three of these Associate dealers. I can't tell you what my distributor in Portland had. I don't know. He had a great many. I couldn't say offhand how many.

Q. You say he had a great many?

A. Quite a few, yes, sir.

Q. While you were with the Pennsylvania Rubber Com-
[fol. 962] pany didn't you keep any records showing the volume of tires or Pennsylvania Rubber Company products that were sold to these distributors?

A. Yes, I have my dollar volume.

Q. What did the dollar volume amount to during this six months you were with the Pennsylvania Rubber Company?

Mr. Driscoll: The Government objects to that as irrelevant and immaterial.

The Court: No, I think he may answer.

A. Approximately $300,000, with tires, tubes and batteries.

By Mr. Hall:

Q. Within the six months' period?

A. That would be the total, yes, in dollar value.

Q. What would it be for the year 1946, would you suppose?

A. That I would not know. I was not with them at that time, and had no access to the records.

Mr. Hall: That is all.

Redirect examination.

By Mr. Driscoll:

If your Honor please, I would like to ask the witness two questions on redirect.

Q. What is the source of the batteries that you sold and distributed? Who makes them?

A. So far as I know, the batteries are made by the National Battery Company, and I believe they have a source [fol. 963] of manufacture in Salem, Oregon.

Q. Are they shipped from there and distributed in your territory in the same manner that you have testified with respect to the tires?

A. They are shipped from both the factory and our Los Angeles warehouse.

Q. From your experience in the tire business, and batteries, you are familiar with the various brands of tires sold to the motoring public, and those which are sold and sponsored and distributed through the Chevron stations, under the sponsorship of the Standard Oil Company?

A. Yes, sir.

Q. Are the tires and batteries of the Pennsylvania Rubber Company comparable and competitive to the Atlas Brand distributed and sold by the Chevron stations?

A. I would say they were, yes, sir.

Mr. Driscoll: That is all.

Recross examination.

By Mr. Hall:

Q. What are the brands of tires that are comparable with the Pennsylvania tires that you have referred to?

A. There are a great many of them.

Q. Give me a good big list.

A. Goodyear, Firestone, Fisk, Mohawk, United States, General, Gates, Federal, Mobile, Montgomery Ward, Sears [fol. 964] Roebuck.

Q. That's a fine list. Are those all sold in this area that you speak of, California, Washington, Idaho area?

A. Yes.

Q. They have been sold there for a number of years, so far as you know, haven't they?

A. Yes.

Q. I want to be perfectly sure of one thing before you leave the stand. In your testimony about soliciting business from stations, did that have to do with the solicitation of stations for these Pennsylvania Rubber Company products?

A. Tires, tubes and merchandise that we sold, and batteries, that is correct.

Q. The Pennsylvania Rubber Company products during this six months' period?

A. That is correct.

Q. One other question: Does the Pennsylvania Rubber Company give a guarantee with its tires?

A. We give a lifetime warranty guarantee guaranteeing the tires against defects and workmanship and material.

Q. That is the extent of the guarantee?

A. That is correct.

Mr. Hall: That is all.

Mr. Driscoll: The Government will call Mr. Edward W. Peck.

[fol. 965] Edward W. Peck, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Edward W. Peck.

Direct examination.

By Mr. Driscoll:

Q. Where do you live, Mr. Peck?

A. 3143 Northeast 32nd Place, Portland.

Q. What is your occupation or business?

A. President of Peck Brothers.

Q. What is the business of Peck Brothers?

A. Distributing automobile tires and batteries and automotive accessories.

Q. What tires and brand name of tires do you represent?

A. Pennsylvania tires and Armstrong tires.

Q. What is the source of the Pennsylvania tires?

A. Some shipments were received from the factory at Jeannette, Pennsylvania, and some from Los Angeles.

Q. Those tires which are manufactured by the Armstrong Rubber Company, what is the source?

A. Three different sources: Westhaven, Connecticut, Natchez, Mississippi, and Des Moines, Iowa.

Q. Do you have any other automotive accessories?

A. We handle Willard batteries, and Winslow filterers.

[fol. 966] Q. Where do you get the Willard batteries?

A. Either at Cleveland, or the factory in Los Angeles. They now have a factory at Portland, Oregon.

Q. When was the factory at Portland, Oregon established?

A. Along in the fall of 1947.

Q. And the filterers?

A. From Oakland, California.

Q. What is the territory with respect to these items of merchandise? Is it practically the same territory?

A. Yes, we cover the State of Oregon, and Southwestern Washington.

Q. Will you explain to the Court your sales organization, and your system of acquisition of sales accounts in the sales of your products and their shipment and distribution?

A. We have approximately 15 to 18 salesmen. Our main office is located in Portland, Oregon. We have branch warehouses in various towns in Oregon and Southern Washington, Salem, Eugene, Roseberg Medford, Oregon, Longview, Washington; and our salesmen operate out of those branch warehouses, soliciting the accessory, tire and battery business from service stations, garages and automobile dealers.

Q. When an order is taken how is it processed? Where is is placed, and how are the goods distributed?

[fol. 967] A. Some items are distributed from trucks we operate out of the branch warehouses; other items are

shipped either from Portland or in rare cases direct from the factory.

Q. To the retail resale outlets?

A. That's right.

Q. And that is true with respect to all of the products which you have testified to?

A. With the exception of tires, and they are all handled at our various branch warehouses, and shipments are made from there.

Q. As to tires, do you include in your testimony with respect to tires and tubes?

A. Yes, sir.

Q. As well as casings?

A. That's right.

Q. With respect to tires, either Pennsylvania tires—by the way, what brand name are they distributed under?

A. Pennsylvania.

Q. What brand name are Armstrong Rubber Company tires distributed?

A. Armstrong.

Q. With respect to those two items which you distribute, are you familiar with the tires that are sponsored by the Standard Oil Company of California, and sold through their Chevron service stations?

A. I think so.

[fol. 968] Q. Are your tires in all respects comparable and competitive with them?

A. Yes.

Q. Do your salesmen solicit the service station trade, those service stations operated by Chevron dealers handling the products and tires and batteries and accessories of the Standard Oil Company?

A. They are instructed to solicit business from all retail outlets.

Q. Do you know of your own knowledge whether or not in soliciting the Chevron stations of the Standard Oil Company your salesmen have been successful or unsuccessful in selling through those outlets?

A. I only know of one Chevron station that we have, of my personal knowledge. There may be others, but that is the only one that I know of.

Mr. Driscoll: You may cross examine.

Cross examination.

By Mr. Hall:

Q. How long have you been president of Peck Brothers?

A. About ten years.

Q. During the year 1946, how many separate retail accounts did your salesmen solicit in the area that you serve?

A. I couldn't answer that.

Q. You have been pretty specific in stating that they [fol. 969] did not sell Chevron accounts, so you must have some knowledge of what they do solicit, and what they sell.

A. No, as a matter of fact, I do not know how many they do. I don't come in direct contact with the sales organization myself, so to answer the question, I believe that I cannot specify of my knowledge as to whether we have other Chevron stations or not. I know of only one myself.

Mr. Hall: That is all.

Redirect examination.

By Mr. Driscoll:

Q. From a merchandising standpoint, with respect to this guarantee or warranty, your tires and batteries are competitive with the Atlas brand?

A. So far, as to all of them, with the exception of the warranty. My understanding is that the Standard Oil tires are guaranteed on a road hazard guarantee. Pennsylvania tires are not guaranteed on that basis. However, Armstrong are.

Mr. Driscoll: That is all.

Willard H. Snow, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Willard Snow.

[fol. 970] Direct examination.

By Mr. Driscoll:

Q. What is your business or occupation, Mr. Snow?

A. I am sales representative for the Kelly Springfield Tire Company.

Q. What is your address? Where are your headquarters located?

A. My home address?

Q. Yes.

A. 1617 Major Street, Salt Lake City, Utah.

Q. And your business headquarters?

A. 520 West 2nd South, Salt Lake City, Utah.

Q. What territory do you have?

A. Utah, Southern Idaho, Ely and Elko, Nevada, Rock Springs, Wyoming.

Q. What are your duties and responsibilities as sales representative?

A. Calling on established Kelly Springfield accounts, soliciting competitive accounts, in the territory or area where we need distribution.

Q. What is the source where Kelly Springfield tires are manufactured?

A. Coburn, Maryland.

Q. Will you explain to the Court the method and manner of shipment and filling orders by the Kelly Springfield [fol. 971] Tire Company?

A. The orders taken by me are forwarded to our Salt Lake warehouse, and shipped in cars to the San Francisco or Los Angeles area or territory from there. Occasionally we may ship shipments direct from the factory to the dealer.

Q. Those shipments are with respect to all of the territory you represent?

A. Yes.

Q. That is, a part of Idaho and Washington?

A. Yes.

Q. As well as Utah and Nevada?

A. Yes, sir.

Q. What type or class of trade do your distributors or sales representatives solicit for the sale of Kelly Springfield tires?

A. Our distributors contact service stations, automobile dealers, and commercial accounts, as well as retail trade.

Q. Do you have any other products besides tires?

A. Tires, tubes, batteries, and tire material, such as Camelback and vulcanizing cement.

Q. What is the brand name of the batteries, do you know?

A. Kelly Springfield.

Q. Where are they manufactured?

A. They are manufactured by the National Battery Company.

[fol. 972] Q. What is the method of distribution of those batteries?

A. The batteries are either shipped from Salem, Oregon, or San Francisco, California, in our territory.

Q. What territory is what?

A. Utah, Southern Idaho, and in Nevada and Wyoming.

Q. Are some shipments directed to retail outlets in that area?

[fol. 973] A. Mainly to our own dealers, all of our own dealers.

Q. Do you have any shipment to your warehouse in Salt Lake City, any batteries?

A. Only on one occasion, which was a back order which the dealer refused, and it was taken into our Salt Lake warehouse.

Q. Otherwise they are shipped directly to the retail outlets?

A. That is right.

Q. Do you know whether or not your distributors solicit the service stations that are operated by dealers under the name of Chevron stations, for the Standard Oil Company?

A. Well, I think they do in some cases; yes.

Q. Have you solicited yourself, business from some of those stations?

A. The Associated dealer, do you mean?

Q. Withdraw the question. Have you made any attempts yourself personally to sell any Chevron outlets?

A. Yes, I have.

Q. Are you familiar with the service station operator at Roosevelt, Utah?

A. Yes.

Q. Are you familiar with the tires and batteries that are sponsored by the Standard Oil, and sold through their Chevron stations under the Atlas brand?

[fol. 974] A. Yes.

Q. Are your Kelly Springfield tires and batteries comparable in grade, quality, price and merchandise attributes to those products?

A. I would say so, yes.

Q. Coming back to Roosevelt, Utah, you are acquainted with the Chevron operator there, under the style name of Snow Machinery Company?

A. Yes.

Q. Have you sold him some of your tires?

A. Yes, sir.

Q. Will you tell the court the physical layout of his place of business?

A. Well, he has a rectangular shaped building, the length going from the street to the back. He has a drive-in station, with a canopy over it. In this building he operates he has a small service station, a place where he displays small accessories and fan belts, and he also has part of it partitioned off, and stores farm machinery, Ford tractors and equipment. In the rear building he has a retreading plant.

Q. With respect to Kelly Springfield tires that you have, do you supply your retail outlets and your distributors with advertising media and sales aids?

A. Yes.

[fol. 975] Q. Did Mr. Snow, in his place of business, make use of your advertising aids?

A. He hasn't as yet.

Q. Where did he take these tires, and things he bought from you,—where did he display them, or put them?

A. He displayed them in the room where he displayed his Ford tractors.

Q. That is the room you have testified is partitioned off, separate and apart from the service station?

A. Yes, that is the part where he takes his cash, and has his fan belts.

Q. What tires, tubes and batteries does he have in the Chevron station?

A. Atlas.

Q. When did you last call upon Mr. Snow?

A. April 6th.

Q. Is he any relative or kin of yours?

A. He is— I don't know how close, though. We just mentioned it, and talked about it.

Q. When did you first become acquainted with him?

A. I think it was in February of this year.

Q. At the time you last called on him, April 6th, did you meet a man by the name of Mr. Reynolds?

A. Yes.

Q. What is Mr. Reynolds' business, if you know?

[fol. 976] A. I understand he is sales representative of Standard Oil, who takes orders for tires, batteries, fan belts and spark plugs.

Q. Where did you meet him?

A. I met him in the room where they store the tractors of the Snow Machinery.

Q. Did you have a conversation with him?

A. Yes.

Q. Who else was present?

A. Just he and myself.

Mr. Hall: Is this the Standard Oil Snow, or the witness Snow?

Mr. Driscoll: This is the Standard Oil Reynolds, the sales representative of the Standard Oil Company.

Mr. Hall: I was wondering who he was talking about.

The Court: He is talking about Reynolds.

The Witness: I was talking about Reynolds.

The Court: He is a cousin several times removed, you say?

The Witness: Yes.

The Court: You were talking of Reynolds?

The Witness: Yes.

By Mr. Driscoll:

Q. What if anything was said by Mr. Reynolds as to your sale of tires to Mr. Snow, and his having them in the tractor place?

[fol. 977] A. Well, he mentioned——

Mr. Hall: That is objected to; no proper foundation has been laid; and it is calling for hearsay.

The Court: I think you had better lay a better foundation: The hearsay objection is overruled.

By Mr. Driscoll:

Q. When did this conversation take place?

A. April 6th.

Q. Where?

A. In the room where he stores his Ford tractors and equipment.

Q. Who was present?

A. Just Mr. Reynolds and myself were talking in that room.

Q. What was your conversation?

Mr. Hall: That is objected to on the ground that no proper foundation has been laid, and it is hearsay.

The Court: Overruled.

The Witness: Shall I go ahead?

The Court: Yes.

A. He said he would like to keep his Atlas tires separate from the Kelly Springfield tires; also, that he had just purchased some Richmond tires, and he was a little bit upset about it. He told me he preferred to keep his Atlas tires separate in the Chevron station, apart from the [fol. 978] machinery equipment. However, at the time of the conversation, he told me, "We do not permit a Chevron station handling Atlas products to handle other than Atlas products, or we will take their franchise away from them."

Mr. Driscoll: Cross examine.

Cross examination.

By Mr. Hall:

Q. How long have you been sales representative for the area you have referred to?

A. I started April of last year.

Q. What were you before that?

A. Five years prior to that I was with the United States Government, approximately four years in the Army Air Forces, and one year with the War Assets Reconstruction Finance Corporation.

Q. Prior to April of last year you had been in the tire business?

A. Yes.

Q. When?

A. Kelly Springfield from 1926 to, I believe, 1941.

Q. In this same area?

A. Yes, as an operating man; not as a salesman.

Q. What was the Kelly Springfield dollar volume sale in that area during 1946?

A. I don't know, sir.

[fol. 979] Q. During 1947?

A. Well, I don't have the exact figure. I can say approximately.

Q. Approximately?

A. Approximately about $375,000.

The Court: Do all the sales go through you?

The Witness: They do, for that area.

By Mr. Hall:

Q. How many accounts do they represent?

A. Approximately again, I would say, probably approximately 42.

Mr. Hall: That is all.

Redirect examination.

By Mr. Driscoll:

Q. Mr. Snow, do you have an adequate supply of tires, batteries, to meet your merchandising requirements?

A. Yes.

Q. You are anxious to develop all the markets you can?

A. Yes, sir.

Mr. Driscoll: That is all.

Clarence Burt Baldry, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Clarence Burt Baldry.

[fol. 980] Direct examination.

By Mr. Driscoll:

Q. Where is your home, Mr. Baldry?

A. 1406 Blane, Salt Lake City.

Q. What is your business or occupation?

A. District manager of the Gates Rubber Company.

Q. What is the territory that you represent for the Gates Rubber Company?

A. Utah, two counties in Wyoming, all of Idaho, excepting the Panhandle, one town in Oregon, and from Reno and back to Salt Lake.

The Court: What town in Oregon?
The Witness: Nyssa.
The Court: At the extreme end?
The Witness: Nyssa, Oregon is in the east end of Oregon.
The Court: Beyond Pendleton?
The Witness: This side of Pendleton; just across the line.

By Mr. Driscoll:

Q. Do you have a line of batteries?
A. Yes, sir.
Q. What is the brand name of your batteries, and the source of their manufacture?
A. The brand name is Gates; the source of supply is the National Battery Company, I believe of Los Angeles and 'Frisco.
[fol. 981] Q. Where are the Gates tires manufactured?

The Court: You can't go along in California, and talk about San Francisco as 'Frisco.
The Witness: San Francisco.

By Mr. Driscoll:

Q. Where are the Gates tires manufactured?
A. Denver, Colorado.
Q. Will you just describe for the court the method of operation of Gates Rubber Company in the district in which you represent them with respect to filling orders and the shipment and distribution of their products?
[fol. 982] A. I take the orders; they are filled by me from my dealer. We do not have distributors; direct dealer basis. My orders are taken and sent by me as I call on them to my warehouse. My warehouse manager has to

The Court: Tell us where the warehouse is.
The Witness: Salt Lake City.
The Court: Salt Lake City, all right.
The Witness: And he distributes them to the dealers.

By Mr. Driscoll:

Q. And where are these dealers located?

A. In the territories that I just mentioned of Wyoming, Utah, Idaho, Nevada, and Oregon.

The Court: Does he ship them by freight or do you have a truck delivery?

The Witness: No; freight, truck or train.

The Court: Not your own?

The Witness: No, not our own.

The Court: You are using the common conveyance?

The Witness: That is right.

The Court: All right.

By Mr. Driscoll:

Q. Are they sometimes filled and shipped from San Francisco?

A. No.

Q. Or from Denver?

A. From Denver, certain shipments; yes, sir.

[fol. 983] Q. Direct to the dealers in these various states that you testified to?

A. Yes, sir.

Q. What type of retail or resale outlets do your distributors contact?

A. We have no distributors. We are direct factory-warehouse to dealers themselves.

Q. What type of dealers do you have, what with respect to their business?

A. Service stations, garages, tire shops, wherever the tires are handled in regards to automotive outlets.

The Court: In other words, you are the only intermediary between the company and these individual dealers?

The Witness: Yes, sir.

The Court: Is that correct?

The Witness: Yes, sir.

The Court: Do you have any solicitors under you?

The Witness: No, sir.

The Court: You do it all?

The Witness: Yes, sir.

The Court: What do you do, travel from place to place?

The Witness: Yes, sir.

The Court: By automobile?

The Witness: Yes, sir.

The Court: I see. All right.

[fol. 984] By Mr. Driscoll:

Q. Are you familiar with the batteries and tires that are sponsored by the Standard Oil Company and sold through Chevron dealers under the branding of Atlas?

A. Yes, sir.

Q. Are tires and batteries that your dealers or representatives sell in which the Gates Rubber Company either manufacturers or has manufactured and distributed—are they in all respects comparable and competitive merchandise-wise and otherwise with the Atlas brand?

A. Yes, sir.

Q. Do you ever call on service stations yourself?

A. Yes, sir; I am the only one that does out of our office.

Q. Are you acquainted with the service station operated by one Carl Cobia at Snowville, Utah?

A. Yes, sir.

Q. When did you first become acquainted with him?

A. Before the war.

Q. Pardon?

A. Before the war.

Q. About what year?

A. I think it was the latter part of 1940 or '41.

Q. How did you happen to get acquainted with him then?

[fol. 985] A. By calling on him to handle our products.

Q. What kind of service station was he running then; what petroleum products did he handle?

A. Continental Oil.

Q. At that time were you successful at that call in placing some of your products with him?

A. Yes, sir.

Q. Both tires and batteries?

A. Yes, sir.

Q. And did you thereafter continue to sell him?

A. Up until the war and then he left for war effort, and after the war, why, he came back.

Mr. Driscoll: The Government will ask to have marked for identification documents produced by the defendants as item No. 33, paragraph 1 of the second subpoena.

The Clerk: Government's Exhibit 64 marked for identification.

By Mr. Driscoll:

Q. Immediately after the war—you testified that he went to war—at the conclusion of the war period when did you next see or become acquainted with Mr. Cobia?

A. I believe it was in November of 1945.

Q. And what was his business and where, if he had one at that time?

A. He was still handling Continental products at Snow-
[fol. 986] ville, Utah.

Q. Did you resume your sales of Gates tires and batteries to him?

A. Yes, sir.

Q. And thereafter did you continue to sell him?

A. Yes, sir.

Q. And do you sell him your products today?

A. No, sir.

[fol. 987] Q. When did he discontinue buying from you?

A. I believe it was in—it was either in the spring or the summer of 1947.

Q. Did you call on him at that time?

A. Yes, sir.

Q. What kind of a service station with respect to the make of petroleum products and other products was he operating at that time?

A. He then had at that time Chevron gasoline.

Q. What colors were his station painted?

A. I believe it is a kind of a yellowish brown and a purple, I would call it.

Q. Did he have any advertising of tires and tubes and batteries around the place?

A. He had Atlas; yes, sir.

Q. Did you solicit him for further sales of your Gates tires and batteries at that call?

A. Yes, sir.

Q. Were you successful or unsuccessful in selling?

A. Unsuccessful.

Q. And at that call did you have a conversation with him as to continuing to buy your tires and batteries?

A. Yes, sir.

Q. Where did that take place and who was present?

A. In his station, and Mr. Cobia and myself were there
[fol. 988] alone.

Q. Will you relate what that conversation was?

Mr. Hall: Objected to as hearsay.

The Court: Overruled. You may answer.

A. I went in the station and said, "Mr. Cobia, I see you have changed to Chevron." He said, "Yes." And I said, "Well, I presume you are going to continue with our line of tires." He said, "Well, I don't know." And I said, "Well, you know you can handle them if you wish because we don't have an outlet here and we still would like to have you represent us." He said, "Yes; I would like to, but," he said, "due to the fact that I am purchasing the Atlas products and due to all bonuses which I get on all accessories, it would pay me to stay with Atlas."

By Mr. Driscoll:

Q. Do you recall the period of the fall of '45 after he had come back from the war and resumed his business what your volume of sales of tires and batteries to him were, the dollar volume?

A. In '46 I believe the total year was $900.00.

Q. Do you know how much your sales during the spring of '47 amounted to with him?

A. I think close to $620.00, close to that.

Q. Subsequent to the call and the conversation you have just testified to have you been successful in selling him any further products?

[fol. 989] A. No, sir.

Mr. Driscoll: The Government moves the admission of Exhibit 64 for identification, which consists of a lease, a dealer agreement TBA between the Standard Oil Company and Carl Cobia, dated February 26th, 1947.

Mr. Hall: Each and all of the documents are objected to as irrelevant and immaterial.

The Court: Overruled.

The Clerk: 64 in evidence.

The Court: All right.

Mr. Driscoll: That is all, Mr. Hall. You may cross examine.

Cross examination.

By Mr. Hall:

Q. How many dealers did you solicit—I mean separate retail outlets did you solicit during the year 1946?

A. Oh, I imagine about 75 in the full year, maybe a hundred, outside of my regular accounts.

Q. Well, I am asking you how many. I am asking you the total number of separate retail outlets that you solicited during that year whether you sold it or whether you did not.

A. Well, I would say about 1500, then.

Q. How many of those 1500 did you sell during that year?

[fol. 990] A. About 1300, I think.

Q. What was the total number that you solicited during 1947?

A. Approximately the same. It may vary a little bit.

Q. And what was the number you sold during 1947?

A. I would say about the same; yes, sir.

Q. Gates tires do not have any road hazard guarantee, do they?

A. Yes, sir.

Q. Have you a copy of that guarantee with you?

A. No, sir; I do not.

Mr. Hall: That is all.

The Court: All right. Any redirect?

Mr. Driscoll: No, your Honor.

The Court: All right.

Mr. Driscoll: We have Mr. Ray Read of Ogden, Utah.

The Court: Pardon?

Mr. Driscoll: We have Mr. Ray Read of Ogden, Utah.

The Court: Do you have another one? I thought you just had two. That makes three.

Mr. Driscoll: I did, too, but I neglected to remember that my co-counsel had one from Ogden.

The Court: All right. Where is he from?

Mr. Driscoll: Ogden.

[fol. 991] The Court: Ogden. All right.

Mr. Driscoll: But before I conclude, I would like to ask Mr. Hall, and through Mr. Hall of the Standard Oil Company. We have been unable to find the contract with the Snow Machinery Company at Roosevelt, Utah, with respect to which another Mr. Snow testified, and which we subpoenaed as Item 34 of the second subpoena. We would like to have them check their records and if they do not have that contract, to see if they can find it.

The Court: All right. I think Mr. Hall will be as accommodating as he has been throughout and have it by next Monday.

RAYMOND E. READ, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Raymond E. Read.
The Clerk: Your middle initial is what?
The Witness: E.
The Clerk: And the last name is?
The Witness: Read, R-e-a-d.

Direct examination.

By Mr. Somerville:

Q. What is your residence address, Mr. Read?
A. 452 12th Street, Ogden, Utah.
[fol. 992] Q. By whom are you employed?
A. I am employed by the J. G. Read & Brothers Company of Ogden.
Q. And what business is J. G. Read & Company engaged in?
A. They are in the wholesale and retail business. Among other things is tires, automobile accessories.
Q. Does your company handle tires, tubes and fan belts?
A. That is correct.
Q. From what source do you receive those fan belts?
A. Dayton; Dayton, Ohio.
Q. Who is the manufacturer?
A. The Dayton Rubber Company.
Q. And is that true of tires and tubes also?
A. That is true.
Q. Do you have a distributor's franchise for Dayton tires, tubes, and fan belts?
A. Yes.
Q. Does your company sell directly to the service station and garage trade?
A. That is right.
Q. What does your franchise cover with respect to direct sales by your company, what area?

A. Roughly, all of Utah, southern Idaho, eastern Wyo-
[fol. 993] ming, and eastern Nevada.

Q. Does your company also act as a distributor for Dayton Rubber Company in a supervisory function with respect to other distributors?

A. Yes; more or less in the nature, I guess you would call it, of a manufacturer's agent, to certain points, usually those that are a little more far distant.

Q. Does your franchise arrangement with Dayton cover this situation:——

Mr. Hall: Just a minute. That is objected to as calling for that which is not the best evidence.

Mr. Somerville: All right. I will reframe that, Mr. Hall.

Q. With respect to the supervisory work in which you act as an agent of Dayton Rubber Company what areas are involved?

A. Well, just certain key points I would say.

Q. What cities or distributors are involved in this supervisory work of yours?

A. There is Twin Falls, Idaho, Pocatella, and Idaho Falls, Idaho, Boise, and Salt Lake City falls in that category too.

Q. And do those distributors at those cities distribute to the service station and garage trade?

A. That is correct.

Q. And are shipments made to those distributors?

[fol. 994] A. Direct from the factory at Dayton, Ohio.

Q. For the supervisory work that you do do you receive compensation, your company receive compensation?

A. That is correct.

Q. From the Dayton Rubber Company?

A. That is correct.

Q. Do you yourself, Mr. Read, contact the service station trade?

A. Occasionally.

Q. Have you at any time contacted a Chevron service station?

A. Yes; I have.

Q. Calling your attention to the service station operated by Carl Cobia in Snowville, Utah, have you called on his service station?

A. Yes.

Q. And have you been successful or unsuccessful with respect to selling tires or fan belts?

A. Unsuccessful.

Q. When did you call on this service station?

A. As I remember it, it was in the summer or fall of 1947.

Q. And at that time was it a Chevron station?

A. No; it was not.

Q. Do you recall what kind of a station it was?

[fol. 995] A. I believe it was Continental Oil.

Q. Did you have any conversations with Mr. Cobia at that time concerning his putting in a stock of Dayton tires and tubes?

A. Yes.

Q. Where was this conversation, at his service station?

A. Yes.

Q. Who were present?

A. Myself, Mr. Cobia and a Mr. Brown.

Q. What was said?

Mr. Hall: Well, now, that is objected to, if the court please. That is hearsay and it is not even shown that the station was a Chevron station.

The Court: I beg your pardon?

Mr. Hall: I think at this time the station was not a Chevron station.

The Court: Well, let us find out. Was it a Chevron station?

The Witness: Not at this time.

The Court: Well, that is all right; I will overrule the objection. Go ahead. I assume that he will testify it was later; if not, we will strike it out. All right; you answer the question.

Mr. Soumerville: You may answer.

[fol. 996] A. Mr. Cobia said—he said, "I might as well be frank with you. Standard Oil is going to build me a new station here and I will not handle your tires."

Q. Calling your attention to a service station in Salt Lake City known as Vern's Serve-all, located at 4th and Second West Streets, have you ever called upon this service station?

A. Yes.

Q. And have you attempted to sell Dayton tires and tubes to this station?

A. Yes.

Q. And when did you call on the station?

A. I have called several times from February of this year to April of this year, during that period.

Q. Refer to your call in February; did you hold any conversation with the operator of this station concerning handling Dayton products, Dayton tires and tubes?

A. Yes.

Q. And with whom did you hold these discussions?

A. With Mr. Vern Bowdle.

Q. At the service station?

A. At his station.

Q. And who were present?

A. Mr. Bowdle, myself, and Mr. Brown.

Q. And what were the nature of the discussions?

[fol. 997] Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. I was attempting to line up Mr. Bowdle as one of these distributors, who would receive his tires directly from the factory to Salt Lake City. And he said he was quite interested in my proposition. He said, "I will have to check with Standard Oil to see that there is no interference with my present setup with them."

By Mr. Somerville:

Q. And were any further discussions held at that time?

A. No. We just went into the details of the——

Q. And did you again call upon Mr. Bowdle concerning this proposition?

A. Yes, I called back several times.

Q. In April did you call upon Mr. Bowdle?

A. I don't remember the exact dates, but I am sure I called on him during the month.

Q. At his service station again?

A. That is right.

Q. And who were present?

A. The same three men.

Q. And what, if anything, further was said concerning the proposition you have testified to?

Mr. Hall: Objected to as hearsay.

The Court: Overruled. Go ahead.

[fol. 998] A. Mr. Bowdle informed me that—he said, "I

won't be able to line up with you unless I can put the account in the name of my father who is also an employee here, and I will not identify—that is, use advertising on this place, this property here." He says, "I do own the adjoining property and I would be willing to identify there, but I will not identify here."

By Mr. Somerville:

Q. And, as a result of that?

A. I said that that was a little irregular on the deal that I was talking to him about, but I would ask the Dayton factory if they would okay it.

Q. And did they okay it?

A. No; they refused.

The Court: Did you communicate that to him later on?

By Mr. Somerville:

Q. Did you communicate that to Mr. Bowdle?

A. No, sir.

The Court: You did not go back, did you?

The Witness: No, sir.

By Mr. Somerville:

Q. That was in April, that last conversation?

A. That is right.

The Court: You did not hear my question. Did you go back at all?

The Witness: No, sir. I came down here instead.

The Court: All right.

[fol. 999] Mr. Somerville: At this time, your Honor, we would like to have marked for identification those documents produced under Paragraph I, item 38, of subpoena 2, which are documents relating to the service station located in Salt Lake City operated by Vern Bowdle.

The Court: All right; they may be so marked.

The Clerk: Government's Exhibit 65 for identification.

By Mr. Somerville:

Q. Mr. Read, calling your attention to service station operated by Olin Baker in Malta, Idaho, have you ever made any calls on that station?

A. Yes.

Q. When did these calls occur?

A. I have called on him occasionally during 1946 and 1947.

Q. And have you made any sales?

A. Not of tires and tubes nor fanbelts; no.

Q. During any of these calls have any conversations been held concerning stocking Dayton tires and Dayton fanbelts?

A. Yes; I have tried to sell him at each call.

Q. When was one of those conversations held?

A. I don't remember.

Q. Approximately?

A. I can only say that I called on him three or four times during the year 1947, and probably twice during [fol. 1000] 1946. That is as near as I can remember.

Q. And each time was the call made at his service station?

A. That is correct.

Q. And each time was Mr. Baker and yourself engaged in conversation?

A. That is right.

Q. Anybody else?

A. Not that I know of.

Q. And what did he tell you concerning your request that he stock your products?

Mr. Hall: That is objected to as hearsay.

A. He said, "No; I cannot stock—buy your——

Mr. Somerville: Wait.

The Court: Overruled.

A. "No! I cannot buy your tires. I am Atlas, or I have signed up with Atlas," or words to that effect.

By Mr. Somerville:

Q. Calling your attention now to service station operated by Jack Christenson at Spanish Fork, Utah, have you ever called upon this station?

A. Yes.

Q. When?

A. The last time I called on the station was in 1946, the early part of '46.

Q. Have you made any sales to this station?

[fol. 1091] A. Yes. You mean personally or through our salesmen?

Q. Are you familiar with the records of your company which would show sales to Mr. Christenson?

A. Yes.

Q. Do you know whether any sales were made in 1946?

A. Yes. The sales to him in 1946 were, roughly, between $1,400 and $1,500.

Q. Do you know whether any sales were made in 1947?

A. In '47 they were about a thousand dollars higher. They would run about between fifteen and sixteen hundred dollars.

Q. Did you make any sales in 1948?

A. Sales in 1948 were about $20.00 only, in 1948.

Q. Does this represent sales or adjustments?

A. That represents adjustments only.

Q. When was the last order placed by Mr. Christenson?

A. September or October of 1947.

Q. Did you thereafter call upon Mr. Christenson with respect to further sales?

A. Yes; he has been called upon regularly.

Q. Were any conversations held with respect to his continuing to stock Dayton tires and fanbelts?

A. Calls at his place of business were made by our salesmen only.

Q. Were any conversations held between you and Mr. [fol. 1092] Christenson concerning this matter? Yes or no?

A. Yes.

Q. Where?

A. My first conversation was with him in the early part of '46, when he mentioned to me that he was——

Mr. Hall: Now, just a minute. No foundation laid.

By Mr. Somerville:

Q. I am talking now, Mr. Read, about the time after the sales were discontinued.

The Court: Was there any conversation after? We are not interested while you were selling him.

The Witness: Mr. Christenson was at our place of business in Ogden approximately a month ago or two months ago.

The Court: All right.

The Witness: And at that time——

Mr. Hall: Now, just a minute. We will object to any conversation as hearsay.

By Mr. Somerville:

Q. Were any other persons present at the time?

A. I don't recall.

The Court: All right. Overruled.

Mr. Somerville: You may answer.

The Court: You may answer. You may state what you said and what he said.

A. I naturally asked him——

The Court: Not "naturally." What did you?

[fol. 1003] A. I asked him to purchase some tires.

The Court: All right.

A. And he said, "Standard Oil is building me a new super service station just about a block or two south of my present location." That is about as far as he went there. But he did say, "I have a truck account that I am going to turn over to you people, that is, I am going to let you sell them direct. I have a truck account that I have been serving and I will turn that over to you direct."

[fol. 1004] Q. Do you know whether or not Mr. Christenson operates a Chevron station, to your knowledge?

A. Yes.

Q. Have you ever observed whether Atlas tires are stocked at that station?

A. Yes.

Q. Does the station bear the legend: Atlas Tires, Tubes and Batteries, or something of that sort?

A. That is correct.

Q. Was that true also of the Olin Baker service station?

A. Yes.

Q. Did Mr. Christenson express any dissatisfaction of Dayton tires?

A. No.

Q. Are you familiar with the various competitive brands of tires, tubes, and fan belts?

A. Yes.

Q. Are Dayton tires, tubes, and fan belts comparable to other brands, including the Atlas brand?

A. Yes.

Mr. Somerville: That will be all.

Cross examination.

By Mr. Hall:

Q. How many years have you been a salesman calling [fol. 1005] on the trade for Read Brothers Company?

A. That is only a part of my duties, but it has been since December, 1945.

Q. How many separate retail accounts did you call on in the territory that you have referred to, exclusive of Wyoming, during the year 1946?

A. That I have called on personally?

Q. That you have called on, yes.

A. For the year 1946?

Q. Yes.

A. That is a hard question to answer. I have an idea.

The Court: If you have an idea, state approximately.

A. Two or three hundred.

By Mr. Hall:

Q. How many of those did you sell?

A. Two-thirds of them.

Q. How many did you call upon in the year 1947?

A. Perhaps a little less.

Q. How many of those did you sell?

A. About the same proportion.

Mr. Hall: That is all.

Mr. Somerville: I will offer into evidence, Exhibit 65 for identification.

Mr. Hall: Each and all of the documents there are objected to upon the ground that they are irrelevant and [fol. 1006-1007] immaterial.

The Court: Objection overruled.

The Clerk: 65 in evidence.

The Court: Does that take care of all the exhibits you have identified?

Mr. Driscoll: Yes.

Whereupon, an adjournment was taken until Monday, May 17th, 1948, at 11:00 o'clock a.m.)

[fols. 1008-1009] IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Leon R. Yankwich, Judge Presiding

No. 6159-Y—Civil

UNITED STATES OF AMERICA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., Defendants

REPORTERS' TRANSCRIPT OF PROCEEDINGS

Monday, May 17, 1948.
Los Angeles, California,

APPEARANCES:

(As heretofore noted.)

[fol. 1010] Los Angeles, California,
Monday, May 17, 1948, 1:30 p. m.

Mr. Hall: May the record show that at an earlier session we were requested to produce certain documents relating to the Snow Machinery Company and that we now tender those documents to plaintiff's counsel?

The Court: All right, gentlemen. Were you waiting for me?

Mr. Dixon: That is right, your Honor.

The Court: I am ready.

Mr. Thody: The Government wishes to call Mr. Arthur A. Haven.

ARTHUR A. HAVEN, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Arthur A. Haven.

The Clerk: Arthur A., and the spelling of the last name?

The Witness: H-a-v-e-n.

Direct examination.

By Mr. Thody:

Q. Where do you reside, Mr. Haven?

A. In Big Tujunga Canyon, C-144, Big Tujunga Canyon. That is a rural route box number.

[fol. 1011] Q. In what city?

A. Tujunga, California.

Q. What is your occupation or by whom are you employed?

A. I am in the wholesale auto supply business.

Q. What is the name of that business?

A. I operate under my own name, Arthur A. Haven Company.

Q. In what capacity do you serve with that company?

A. General capacity.

Q. What?

A. Operate the business, purchase, sell, and supervise other people at work with me.

Q. Are you also your own general manager?

A. Yes.

Q. How long have you been in this business?

A. 15 years.

Q. What has been your previous experience, business experience?

A. I was in the business of jobbing lubricating oils for five years prior to entrance——

Q. What products does Arthur A. Havyn Company sell?

A. Tires, tubes, general line of auto supplies.

Q. In what sales area or territory do you sell these products?

A. We sell tires and tubes in the nine southern coun-

[fol. 1012] ties of California, and Clark County, Nevada; and then we operate all over the United States, the Hawaiian Islands and Alaska in the auto supplies.

Q. What brand of tire do you sell?

A. Armstrong.

Q. What source do you receive your requirements of Armstrong tires from?

A. From the Armstrong plants.

Q. Where are they located?

A. One is in West Haven, Connecticut; the second in Des Moines, Iowa; and the third is in Natchez, Mississippi.

Q. Do you do your own ordering?

A. Yes; I do.

Q. Are you acquainted with the manner in which these tires are received?

A. Yes.

Q. How are they received?

A. We receive some shipments by rail and some by rail and water.

Q. Do you receive all the shipments yourself?

A. Yes.

Q. Then you redistribute those?

A. Yes.

Q. Do you have any tires which are sent on drop shipments to your customers?

[fol. 1013]. A. I think on two occasions we had a partial car of drop shipment en route.

Q. With reference to these Armstrong tires, through what type or class of trade do you generally sell this merchandise?

A. Service stations, garages, auto supply stores, car dealers.

Q. What method do you employ in making your sales to this type of trade?

A. Personal solicitation.

Q. Do you have salesmen?

A. Yes.

Q. How many?

A. 12.

Q. And do they sell completely in the area described by you previously in your testimony for the sales of tires?

A. No. We have one man who represents us in Utah, one in Arizona, and a third man that works in New Mexico and west Texas. They do not sell tires. The balance of our salesmen, the nine other men, sell tires.

Q. Directing your attention to these other lines of accessory products described by you other than tires, could

you describe specifically what items they include, what other items of accessory products?

A. They include several hundred items, such as tire re-
[fol. 1014] pair materials, fanbelts, radiator hose, accessories, spotlights, fog lamps.

Q. Do you order that merchandise?

A. Yes; I do.

Q. From what source?

A. From various manufacturers. Usually one manufacturer makes one product and we buy from several hundred.

Q. Where are those manufacturers located?

A. Well, they are located at various points in the United States, many near Chicago, many in the east, in New York and Connecticut, and scattered through Ohio and Pennsylvania. They are pretty well scattered throughout the middle west and east.

Q. Are these the products that you sell throughout the United States?

A. Yes.

Q. Do you sell throughout the states of California, Oregon, Washington, Idaho, Nevada, Utah, and Arizona, which, in this particular action, Mr. Haven, we refer to as the western area?

A. Yes.

Q. What sales methods do you generally employ in selling these automotive accessories throughout the western area?

A. We use personal solicitation in California and Arizona; and then we use direct mail advertising in California
[fol. 1015] and Arizona and the other five states you mentioned.

Q. To what class of trade or type of trade do you have your actual contacts with?

A. Car dealers, auto supply stores, service stations, and garages.

Q. Will you describe this mail order merchandising system that you referred to? What type of trade do you solicit with reference to that type of merchandise?

A. Well, we solicit the same types of trade with both methods, direct mail and personal solicitation.

Q. Do you do any selling personally now?

A. Yes; I do.

Q. What selling do you do?

A. Well, there are a few accounts that I still call in myself, and one or two in Arizona and some up in the San Joaquin Valley.

Q. Is it your policy to open up new accounts and develop new business wherever possible?

A. Yes.

Q. Through the various methods that you have described, your personal contact work, your sales by mail solicitation, approximately how many solicitations per year of service stations and garages do you make? Take the year 1947, can you make an approximation in the seven western states?

A. Well, we solicit at least once and, in most cases, [fol. 1016] from three to three or more times. There would rarely be an occasion where we solicit only one time. But we solicit slightly over 17,000 accounts in that area.

Q. And these products that you have referred to: First, the Armstrong tires, is that a type of tire that is generally used by motorists for their automotive needs?

A. Yes.

Q. Is that generally comparable with other types and classes of tires which are purchased by motorists?

A. Yes.

Q. Is it the type or class of tire that is generally comparable with the Atlas tire?

A. Yes.

Q. And with your line of accessory merchandise, generally, is that the type that is generally purchased by the motoring public for their needs on automobiles?

A. Yes. We cover fairly well the items that are generally purchased, and then we carry other items that are not generally purchased.

Q. Which items are the ones that you say are generally purchased?

A. Well, the things that go on an automobile, used by motorists in conjunction with the use of their car.

Q. Are the items which you have previously described, the battery, the battery cables, fanbelts, and so on, the [fol. 1017] items you have generally referred to as the items generally purchased?

A. Yes.

Q. Are those comparable to the types that are purchased by the motorists?

A. Yes.

Q. Are you acquainted with the type of merchandise shown in Chevron stations under the Atlas brand name?

A. Yes; not intimately, because I have not personally called on Chevron stations myself for several years.

Q. Is your accessory line, so far as you know, generally the same or comparable to that line?

A. Yes.

Mr. Thody: That is all, Mr. Hall.

Cross examination.

By Mr. Hall:

Q. You said, Mr. Haven, that you solicited about 1700 service stations and garages during 1947?

A. 17,328.

Q. That was 17,128?

A. 328.

Q. Now, those are separate establishments, are they?

A. Yes.

Q. How many did you sell?

A. It would be an estimate. I couldn't give the exact [fol. 1018] figures.

Q. Well, what is your best estimate?

A. Approximately 7,000.

Q. How many establishments of that character did you sell during the year 1946, approximately?

A. Well, it was much smaller. As close as I could estimate, I would say it was probably half that number, 3,500.

Q. And you understand that in talking about these figures we are talking about the seven western states?

A. Yes, sir.

Mr. Hall: That is all. Thank you.

Mr. Thody: The Government now wishes to call Mr. Ralph Plecher.

Ralph W. Plecher, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Ralph W. Plecher.
The Clerk: How do you spell the last name?
The Witness: P-l-e-c-h-e-r.

Direct examination.

By Mr. Thody:

Q. Where do you reside, Mr. Plecher?
A. 1120 South Plymouth Boulevard, Los Angeles.
[fol. 1019] Q. What is your occupation?
A. I am a salesman.
Q. For whom?
A. Arthur A. Haven Company.
Q. How long have you been employed with the Arthur A. Haven Company?
A. My 11th year.
Q. What was your previous experience?
A. Wholesale petroleum products.
Q. As a salesman for the Arthur A. Haven Company is there a general territory or area assigned to you?
A. That is right.
Q. What is it?
A. Outside of the City of Los Angeles, starting in Altadena, to Point Firmin in San Pedro; at the present time, east to Banning, including Long Beach.
Q. Have you had previous sales territories prior to this assignment?
A. Well, I have had additional territory including this, which I do not operate at the present time.
Q. What products do you sell for the Arthur A. Haven Company?
A. A complete line of automotive products.
Q. Do you sell tires?
A. I do.
[fol. 1020] Q. And do you sell a general line of auto accessories?
A. I do.
Q. To what class of retail outlets do you generally merchandise these products?
A. Service stations, garages, car dealers and that sequence.
Q. Would you describe briefly, Mr. Plecher, to the court

the manner employed by you in the selling of this merchandise to these outlets?

A. Well, the account is approached with a complete line of merchandise that we feel they would be interested in purchasing, backed up by catalog, price sheets, and samples.

Q. Do you visit these by personal automobile?

A. Yes, indeed.

Q. Approximately how many stations do you visit each day?

A. Well, it will run from eight to 12, depending on the type of station and the number of lines that I feel that they are apt to be interested in.

Q. How do you follow up on these calls? Do you get out of your car?

A. Yes.

Q. Go into the office?

A. That is right.

Q. And do you talk to the manager or the proprietor?

[fol. 1021] A. Very earnestly.

Q. Have you called upon the station located at 745 East Colorado Boulevard in Pasadena, California?

A. I have.

Mr. Thody: The Government at this time wishes to have marked for Government's identification the dealer agreement TBA between Standard Oil Company and Oswald Cossette, dated May 28, 1945, and the accompanying papers attached thereto. And may the record show these were produced in response to subpoena No. 1, item 26?

The Clerk: Government's Exhibit 66 for identification.

By Mr. Thody:

Q. When did you first call upon this station?

A. In December, 1945.

Q. Did you initially solicit this account at that time?

A. No. The inquiry came through the mail in answer to an advertisement that we had in a trade paper.

Q. What was your advertisement?

A. Regarding an automatic cigar or cigarette lighter for the Christmas trade.

Q. Did you later visit the station?

A. On my next trip to Pasadena; yes, sir.

Q. Did you make any sales?

A. I did.

Q. What did you sell?

[fol. 1022] A. Well, at that time I was able to interest this merchant in some chromium-plated exhaust pipes, extension tips, exhaust reflectors, and some certificate holders, I believe.

Q. Did you call upon this station at any subsequent time?

A. I did the following month.

Q. When would that be?

A. That would be in February, 1946.

Q. Did you make any sales at that time?

A. I was unable to make a sale.

Q. Did you have any conversations with anybody at that time as to the reasons for your failure to make a sale?

A. I did.

Q. And when did these conversations take place?

A. Approximately the first week in February of 1946 at—

Q. And where did these conversations ensue?

A. At 1221 East Colorado Street in Pasadena.

Q. And who was present?

A. Mr. Cossette and myself.

Q. And what were these conversations?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. What were the conversations?

[fol. 1023] Mr. Thody: Yes.

A. Well, I proceeded in my usual manner of laying out my order book and my sample case and removing some articles therefrom to discuss, at which time I was invited to put it back in the box because he was unable to buy any further items from us.

Q. Have you made any calls upon the service station located at 4th Street and Niland Avenue in Niland, California?

A. I have.

Mr. Thody: At this time, your Honor, the Government wishes to have marked as Government's Exhibit for identification dealer agreement TBA dated November 1, 1945, between Standard Oil and James R. Gordon, and the assignment of that agreement to Omar L. Bowen, dated Feb-

ruary 1, 1947. These agreements were furnished in response to subpoena 1, item 27.

The Clerk: Government's Exhibit 67 for identification.

By Mr. Thody:

Q. Calling your attention for just one moment, Mr. Plecher, to your conversations which you have related with Mr. Cossette—

A. Yes.

Q. Was there ever any dissatisfaction expressed as to your products at that time?

A. No, there was not.

Q. And what was the reason stated by you?

[fol. 1024] A. He was required under the terms of his agreement with the Standard Oil Company to make purchases of like items from the company.

Mr. Thody: The Government now moves, if the court please, to have the Government's Exhibit for identification No. 66 be admitted into evidence.

Mr. Hall: Each and all of the documents so offered are objected to on the grounds that they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: 66 in evidence.

By Mr. Thody:

Q. Where is Niland, California, this location of this station you have referred to?

A. Well, Niland, California is along the eastern shore of Salton Sea, a short way from the Arizona-California line, directly north of Brawley.

Q. Is this a more or less secluded place or is it—

A. It is a very isolated section.

Q. And when did you call on that station?

A. I first called on that station in 1945.

Q. And who was operating the station at this time?

A. Durard Harris.

Q. What is the name?

A. Durard Harris, D-u-r-a-r-d.

Q. Did you make any sales to him?

[fol. 1025] A. I did.

Q. What did you sell him?

A. Practically our complete line.

Q. Did you make any further calls on that station?
A. Every month for a considerable period.
Q. For what period of time?
A. Well, I believe I could say from 15 to 18 months.
Q. Did you make any sales?
A. Every trip.
Q. And who did you contact?
A. Mr. Harris.
Q. Mr. Harris. Did you contact any other person?
A. Later on, he sold his station out to Gordon.
Q. Mr. Gordon?
A. Gordon.
Q. Did you make any sales to Mr. Gordon?
A. I did.
Q. When?
A. Well, from approximately the middle of 1946 through until shortly after the first of 1947, when he sold.
Q. Did you ever have any conversation with Mr. Gordon concerning his agreement with Standard Oil Company?
A. Yes. I was able to—
Q. Just answer yes or no.
A. Yes.

[fol. 1026] Q. And when did these conversations take place?
A. Two or three conversations took place the last quarter of 1946.
Q. And where did these conversations take place?
A. At his place of business at Niland.
Q. And who was present?
A. Mr. Gordon and myself.
Q. And what were these conversations?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. The conversations were that I was a little bit amazed at the amount of business that I was able to get from time to time, and he outlined to me that due to his location he was not favored with much attention from the company and he had difficulty in getting these things which I was able to serve him with.

Q. Did you continue to call on this station after this conversation?
A. I did.

Q. Who did you see at that time?

A. Well, after Mr. Gordon left it was taken over by a chap by the name of Bowen.

Q. Did you ever make any sales to him?

A. I was unable to make any sales to Mr. Bowen.

Q. Did you ever have any conversations with Mr. Bowen [fol. 1027] concerning it?

A. I did.

Q. And where did these conversations take place?

A. At the same place of business in Niland.

Q. And when did they take place?

A. Well, they took place January and February and March in 1947.

Q. And what were these conversations?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. That I couldn't seem to get any business and I was rather surprised, as I had enjoyed business there in the past; and he told me that he was unable to buy outside the Standard Oil Company's source of supply.

Q. Had either Mr. Harris or Mr. Gordon ever expressed any dissatisfaction with the products which you had sold to them?

A. They never did.

Q. Have you ever called upon the station located at 1221 East First Street in Santa Ana, California?

A. I have.

Mr. Thody: The Government wishes at this time to have marked as Government's exhibit for identification the dealer agreement TBA with Mr. Hubert B. Riggan dated January 18, 1046, and the sublease with Mr. Riggan dated [fol. 1028] April, 1941. These documents were produced in response to subpoena No. 1, item 28.

The Clerk: Government's Exhibit 68 marked for identification.

Mr. Thody: And the Government moves at this time, your Honor, that Government's Exhibit 67 for identification be admitted into evidence.

Mr. Hall: Each and all of these documents so offered are objected to on the grounds that they are irrelevant and immaterial.

The Court: Overruled.
The Clerk: 67 in evidence.

By Mr. Thody:

Q. When did you call upon this station located at 1221 East First Street, Santa Ana?
A. 1945.
Q. Did you sell them any products?
A. Yes, sir.
Q. What did you sell them?
A. Well, several lines of automotive accessories and some inner tubes.
Q. What brand of inner tubes did you sell them?
A. Armstrong.
Q. Have you called upon that station since that time?
A. I have.
Q. How often?
[fol. 1029] A. Once a month.
Q. Do you now sell this account?
A. I do not.
Q. Have you ever had any conversation—to whom did you talk at that station?
A. Mr. Riggan was the proprietor.
Q. Have you ever had any conversation with Mr. Riggan concerning the fact that he had previously bought from you and that he has now discontinued your line?
A. I have.
Q. And when did those conversations take place?
A. About August, 1947 was the date in my mind.
Q. What part of it?
A. Well, I would say the latter part of August, possibly—it is kind of hard to remember just exactly the time of month.
Q. Well, where were you at the time these conversations took place?
A. In his office at 1221 East First Street.
Q. Who was present?
A. Mr. Riggan and myself.
Q. And what were those conversations?

Mr. Hall: Objected to as irrelevant.
The Court: Overruled.

A. The conversation was that certain items that I [fol. 1030] had been able to furnish him in the past he now

would be required to purchase from the Standard Oil Company.

Q. Have you visited any other Chevron stations which advertised the sale of Atlas tires?

A. I have.

Q. Can you name any such station?

A. Well, I have one in mind, the S. M. McCabe at 6th and Circle in Corona.

Q. Have you sold this station any of your products?

A. I have.

Q. Do you sell him now?

A. I do.

Q. What items do you sell him now?

A. Well, at the present time I am selling him items other than what are known as sundries or automotive items, such as light bulbs, battery cables, tires, radiator caps, et cetera.

Q. Do you sell him any tires?

A. No.

Q. Do you sell him any batteries?

A. No.

Q. Did you ever discuss with Mr. McCabe the reasons why you did not sell him these items?

A. I have.

Q. And when did you have such discussions?

[fol. 1031] A. Practically every 30 days from about the middle of 1946.

Q. When is the last time you discussed this?

A. 30 days ago.

Q. And where were you at that time?

A. In their station at 6th and Circle in Corona.

Q. And who was present?

A. Mr. McCabe and myself.

Q. And what were those discussions?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. The discussion was that certain items that he had been purchasing from us in the past he would be required to purchase from the Standard Oil Company.

Mr. Thody: The Government now wishes or moves to have admitted into evidence Government's Exhibit No. 68 for identification.

Mr. Hall: Each and all of the documents so offered are

objected to on the grounds that they are irrelevant and immaterial.

The Court: Overruled.

Mr. Thody: You may have the witness, Mr. Hall.

The Clerk: 68 in evidence.

[fol. 1032] Cross examination.

By Mr. Hall:

Q. When was it that anyone first mentioned the fact that you might be a witness in this case?

A. When was it?

Q. Yes.

A. Oh, approximately 60 days ago.

Q. Who was it?

A. I believe it was Mr. Haven.

Q. At the time you had the conversation with Mr. Cossette what articles were you offering for sale at his station?

A. At the time of my last conversation?

Q. Well, at the time of the conversation you related.

A. Well, I was offering him additional supplies of the exhaust extensions and exhaust reflectors that I had sold him; also flash lights, gas caps, radiator caps, other supplies, certificate holders, lamp bulbs, fuses, battery cables, battery bolts, shims, tire repair materials for use or for resale, valve stems, cores, caps.

Q. Anything else?

A. Tires and tubes.

Q. Let me understand you: You had made an offer to him or specifically in your conversation referred to all those articles before he told you that he could not buy them [fol. 1033] from you?

A. Well, perhaps I didn't make myself clear. As I say, when I go in, I take my sample case which is a box of approximately that length, this high, and about the same width, and I have numerous articles that I feel are timely or seasonable, and this is laid out on the man's desk and the top is taken off, the front drops in front, and all these are exposed to view. And, as a rule, he may be busy, maybe, waiting on a customer, and I take that time to set out the items that I want to open the conversation with.

Q. Samples of items?

A. That is right.

Q. Samples?

A. The others that I don't have in the—

Q. Pardon me a minute, sir. Did you say "samples"?

A. Samples, yes.

Q. You don't carry tires in that case, do you?

A. No. But I have tires and the larger items on the price sheets and the catalog sheets that I also carry.

Q. Then you show him something besides samples?

A. That is right.

Q. What were you offering Gordon at the time you had the conversation with him to which you have testified?

A. Well, the list would be practically identical in every account that I call on.

[fol. 1034] Q. And would the same be true of Riggan at the time you had the conversation with him?

A. That is right.

Q. And would the same be true of McCabe at the time you had the conversation with him?

A. That is right.

Q. Your answer is yes?

A. That is right?

Mr. Hall: That is all.

Mr. Thody: That is all. The Government now wishes to call Mr. Nate Katzev.

Nathan Katzev, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Nathan Katzev.

The Clerk: Will you speak louder, please. That is spelled how?

The Witness: K-a-t-z-e-v.

Mr. Hall: What was the spelling of the last name?

The Witness: K-a-t-z-e-v.

Direct examination.

By Mr. Thody:

Q. Where do you reside, Mr. Katzev?

A. 360 North Orange Grove Avenue, Los Angeles.

[fol. 1035] Q. What is your occupation?

A. I am the manager of the tire division for the J. N. Ceazan Company.

Q. In what business is the J. N. Ceazan Company engaged in?

A. They are wholesale distributors of tires, tubes, batteries and electrical appliances.

Q. And what brand or brands of tires and tubes do you sell on a wholesale basis?

A. Dayton.

Q. How long have you been associated—

Mr. Hall: Pardon me a minute. What was that last name?

The Witness: Dayton Thoroughbred.

Mr. Thody: Will you kindly speak up, Mr. Katzev?

Q. How long have you been associated with the J. N. Ceazan Company?

A. Approximately 15 years.

Q. Have you had any experience in the marketing and selling of tires?

A. No, no.

Q. What is the sales territory covered by the J. N. Ceazan Company in its marketing of tires, tubes and batteries?

A. California, Arizona, and Nevada.

Q. Do you have any sort of a franchise or distributor arrangement with the Dayton Company for the sale of [fol. 1036] tires to these areas?

A. Yes, sir.

Q. Would you explain what this arrangement is?

A. Well, the best way I can explain it is that they sell us the tires at one price and we resell them at another price.

Q. For sale in these three states?

A. Yes, sir.

Q. Are you acquainted with the method whereby these tires and tubes are ordered?

A. Yes.

Q. Do you do any of the ordering yourself?

A. Well, very seldom. We have a purchasing agent that does the buying.

Q. From what source do you order tires?

A. Direct from the Dayton Rubber Company in Dayton, Ohio.

Q. And from where are shipments made?

A. Directly from the Dayton factory in Dayton, Ohio.

Q. How are they sent to you?

A. By rail and also by water.

Q. Do you have any central distribution points or warehouses that receive those articles?

A. Our own stores. I mean where we are located is our warehouse.

[fol. 1037] Q. Where are those stores located?

A. One in Los Angeles, one in San Diego, and one in San Francisco.

Q. Now, can you describe the method and manner employed by your company in the selling of these products in these three states?

A. Yes, sir.

Q. Would you so describe?

A. Well, we have salesmen that call on gas stations, tire stores, trucking companies, what you call commercial accounts.

Q. How big is the sales force you speak of?

A. Well, in our Los Angeles store we have, I believe, nine salesmen, eight or nine—I forget which.

Q. In your San Francisco store how many?

A. Approximately the same amount.

Q. And your San Diego store?

A. Three.

Q. What is the area, the marketing area, supplied by your San Francisco store?

A. They come as far south as Fresno.

Q. And in an easterly direction how far do you sell?

A. Let me get my geography now. We go as far north as the northern border of California.

Q. Do you or do you not sell into the State of Nevada [fol. 1038] from your San Francisco store?

A. The northern part of Nevada is covered by our San Francisco store, and we cover Las Vegas and Boulder City and that area.

Q. Directing your attention to sales in northern Nevada how are shipments made to your customers located in that area?

A. From our San Francisco store.

Q. Do you ever make any shipments direct from the Dayton factory that you have referred to?

A. On rare occasions, unless it be a rush order.

Q. What is the area, sales area, covered by your Los Angeles store?

A. We go as far as Fresno.

Q. Do you cover any part of Nevada?

A. Yes. I said, Las Vegas, Boulder City and that particular area.

Q. How are shipments made to the Nevada accounts serviced by your Los Angeles store.

A. From the Los Angeles store.

Q. And what is the area serviced by your San Diego store?

A. They go as far as Imperial Valley and up as far as Oceanside.

Q. Now, these salesmen you have described who operate [fol. 1039] these various stores, to what type or class of trade do they normally call?

A. The major portion of the business is gas station business.

Q. Do they or do they not have freedom in the selection of customers?

A. Yes, they do.

Q. Do you or do you not encourage them to develop new accounts?

A. Certainly.

Q. Do you normally furnish any advertising media to your accounts?

A. We offer them an advertising program.

[fol. 1040] Q. What is that advertising program?

A. We pay—we offer to pay 70 per cent of the cost of their advertising.

Q. Of any or all types?

A. Of any advertising pertaining to the Dayton Tire that is in line with the Dayton program.

Q. Do your salesmen explain this advertising program at the time they make their contact?

A. Yes, sir.

Q. Do you furnish any displays or signs?

A. Yes, sir.

Q. What are they?

A. We have metal signs, tire stands, inserts to put in the tire. We furnish that free of charge.

Q. Do you know, Mr. Katzev, for the year 1946 what your volume of business was for sales of tires and tubes in the States of Nevada, California, and Arizona?

A. I would say it would be approximately close to a million and a half dollars.

Mr. Thody: That is all.

Cross examination.

By Mr. Hall:

Q. What year was that you mentioned the million and a half for?

[fol. 1041] A. I think in 1946.

Q. What was it in 1947?

A. I am not certain, but I think it was just a little higher than '46.

Q. Who first discussed with you the prospect of your appearing as a witness in this case?

A. Well, I will put it this way: the first thing I knew there was such a case was when the F.B.I. walked in our office and wanted to know if we knew of any cases where we couldn't sell tires to the Standard Oil Company, and that was the first time.

Mr. Hall: That is all. Thank you.

Redirect examination.

By Mr. Thody:

Q. Mr. Katzev, are you acquainted generally with the type of tires bought by the motoring public generally for use on passenger cars?

A. Yes.

Q. Is your Dayton tire comparable in quality and price generally with other types of tires so purchased?

A. It is.

Mr. Thody: That is all.

Mr. Hall: That is all.

Mr. Thody: The government now wishes to call Mr. Ralph A. Winchester.

[fol. 1042] RALPH A. WINCHESTER, called as a witness by the plaintiff, being first duly sworn, testified as follows:

The Clerk: Take the stand, please, sir. What is your name, please?

The Witness: Ralph A. Winchester.

The Clerk: The spelling is W-i-n-c-h-e-s-t-e-r?

The Witness: Right.

Direct examination.

By Mr. Thody:

Q. What is your residence, Mr. Winchester?

A. 218 Olive, Inglewood.

Q. What is your occupation?

A. I am a field representative for the tire division of J. N. Ceazan Company.

Q. Do you have any territory that is assigned you by the J. N. Ceazan Company for the sale of its products?

A. I do.

Q. What is that territory?

A. I have some accounts in different parts of Los Angeles City proper. I have San Bernardino and Riverside Counties, and Arizona, and a portion of the Imperial Valley.

Q. What type or class of retail outlets do you generally contact in the selling of your products?

A. Well, I call on service stations, some car dealers [fol. 1043] or auto supplies stores and tire dealers.

Q. Do you go out every day and attempt to sell your merchandise?

A. Yes, sir.

Q. Approximately how many customers do you solicit each day?

A. Well, that varies somewhat on my ability to get to talk to them right away, but on an average about 8 or 10—8 to 10.

Q. Describe generally what your method of operation is in soliciting these accounts?

A. Well, of course, I have the regular established accounts that I merely call on, and I try to contact three or four new accounts each day. You can't always do that, but the general procedure is to get ahold of the man who does the buying and present my line to them, and if they are a

new account ask them to take on the Dayton line of tires and tubes.

Q. Do you visit them by automobile?

A. Yes.

Q. Do you get out of your car?

A. Oh, yes.

Q. Do you go into the service station office?

A. Yes.

Q. Have you any idea approximately how much time you spend with each prospective account?

[fol. 1044] A. Well, that depends a little on the reception I get.

Q. On an average how much?

A. I spend sometimes two hours and a half, and other times 30 minutes.

Q. Now, do you furnish advertising to your established accounts?

A. Yes, sir.

Q. Do you explain this advertising feature at the time you solicit new accounts?

A. I do, if there is a possibility of selling them.

Q. Well, what do you mean by that?

A. I mean by that if the door isn't closed immediately on the possibility of a sale, then I go into the entire program I have to offer them.

Q. Do you have any other features which you describe to these prospective accounts?

A. Well, we have the features of the tire line that are distinct to the Dayton line, we have the newspaper advertising program, we have the sign program and we have the guarantee program.

Q. What is the sign program you refer to?

A. Well, we have a program where if a man wishes to paint his building with a sign of the Dayton Company we will pay 70 per cent of that on his furnishing us an estimate.

Q. Do you also furnish neon signs?

[fol. 1045] A. We do.

Q. What do you charge for furnishing neon signs?

A. Well, we have a 9-foot neon sign that if a man signs a franchise with us we will furnish him this sign without cost, provided he agrees to erect it and keep it burning.

Q. What is the warranty proposition that you referred to?

A. That is a road hazard warranty.

Q. What do you mean by that?

A. The road hazard warranty is a guaranty by the company that the tire bearing the Dayton name and serial number sold him will be guaranteed so many months against road hazards. We have two tires, of course, and they carry different warranties.

Q. What guarantees do you carry?

A. The standard or what is known as the 100 level tire, what is known in our category as the Dayton Thoroughbred, carries a one-year warranty against road hazards and tread wear.

Q. Now, do you also sell batteries?

A. Yes, sir.

Q. What brand of batteries do you sell?

A. We sell Prest-O-Lite, and another battery known as the Dayton battery.

Q. Have you in your solicitations called upon the service station located at 3985 Whittier Boulevard in Los [fol. 1046] Angeles, California?

A. Yes, sir.

Mr. Thody: The government wishes at this time to have marked as a Government's Exhibit for identification the agreement, the dealer TBA agreement, executed by Mr. C. E. Peterson, which was produced in response to subpoena No. 1, paragraph No. 1, subparagraph 44.

The Clerk: That is Government's Exhibit 69, marked for identification.

By Mr. Thody:

Q. When did you call on the station located at this address?

A. Approximately the week of March 25th.

Q. I am sorry. I didn't get that.

A. About March 25th this year.

Q. With whom did you talk?

A. Mr. Peterson.

Q. Did he purchase any of your merchandise?

A. No, sir.

Q. Did you have any conversations with Mr. Peterson at this time concerning the reasons he did not purchase your merchandise?

A. I did.

Q. Where did the conversations take place?

A. In his station on Whittier Boulevard.

Q. When was this?

[fol. 1047] A. As I say, I believe it was about the 25th of March.

Q. Who was present?

A. Mr. Peterson and myself.

Q. What reason did Mr. Peterson give for not purchasing your merchandise?

A. Mr. Peterson said because he was a Chevron station it would be pretty hard for him to handle any line of tires except Atlas. He was a little evasive as to just exactly why he couldn't except to say that the company could make it pretty rough for him if he didn't play along with the program.

Q. Did you make any subsequent calls to this station?

A. I did not.

Q. Have you ever visited the station located at 3202 Ramona Boulevard in Los Angeles, California?

A. I have.

Mr. Thody: The government wishes to have marked for identification the agreement, dealer agreement TBA, dated May 20, 1946 with Standard Oil Company of California and Mr. James S. Williams and the supporting papers which are attached thereto, all of which documents were received from defendants in response to subpoena 1, paragraph 1, No. 46.

The Clerk: Government's Exhibit 70 for identification.

Mr. Thody: And the government wishes at this time, your Honor, and moves that Government's Exhibit 69, for [fol. 1048] identification, be admitted into evidence.

Mr. Hall: Each and all of the documents so offered are objected to on the ground they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: 69 in evidence.

By Mr. Thody:

Q. When did you call on this station, Mr. Winchester?

A. About the middle of March, 1948.

Q. Did you sell any of your tires, tubes and batteries?

A. No, sir.

Q. To whom did you talk?

A. To Mr. Williams.

Q. I am sorry. I didn't get that.

A. Mr. Williams.

Q. Did you have any conversations with him as to the reasons he didn't purchase your merchandise?

A. He said he was—

Q. No, just answer "Yes" or "No."

A. Yes.

Q. When did those conversations take place?

A. About the middle of March, 1948.

Q. And who was present?

A. Mr. Williams.

Q. What were those conversations?

Mr. Hall: Objected to as hearsay.

[fol. 1049] The Court: Overruled.

The Witness: Mr. Williams said that the only way he might be able to handle any Dayton batteries would be on the—to use his exact words—on the Q.T. He said he wouldn't be able to display them and if he sold any he would have to keep them out of sight.

By Mr. Thody:

Q. Did you call back?

A. No, sir.

Q. Why didn't you?

A. Well, that type of a dealer is not the type of dealer—

Mr. Hall: Just a minute. That calls for a conclusion of the witness, if the court please.

The Court: Sustained. That is not material.

By Mr. Thody:

Q. Have you called upon the station of Mr. A. A. Lamb, located at Olympic and Central Avenue in Los Angeles?

A. I have.

Q. When did you call on that station?

A. I called on Mr. Lamb about the 1st of February—or the first of March, 1948.

Q. Did you explain to Mr. Lamb the advantages of your merchandise, as you have described to the court?

A. I did.

Q. Did you sell him?

[fol. 1050] A. No, sir.

Q. Did you have any conversations with him as to the reasons why you did not sell him?

A. I did.

Q. When did these conversations take place?

A. About the 1st of March.

Q. And where?

A. In his station. At the station at 9th, or Olympic and Central Avenue.

Q. Who was present at that time?

A. Mr. Lamb.

Q. And what were these conversations?

Mr. Hall: Objected to as hearsay.

The Court; Overruled.

The Witness: Mr. Lamb said he had a full stock of Atlas tires and batteries, and it would be pretty hard for him to carry any other line of tires or batteries in his station and sell them for us.

By Mr. Thody:

Q. Did you explain your advertising program to him?

A. I asked him—I did, yes, sir.

Q. Did he make any comment at that time regarding your advertising program?

A. He did.

Q. What type of tires did you try to sell him?

[fol. 1051] A. Dayton tires.

Q. Did you discuss your price with him at this time?

A. I did.

Q. Did you discuss whether it was comparable with the price of tires he was then purchasing?

A. I did.

Q. Did he have any comments concerning that?

A. He said it was a good price for the reason that we had a very special deal on at that time, and that was what I was trying to interest him in.

Q. What was your special deal?

A. We had a deal at that time on our Autocrat tire, which is a high-priced, premium-priced tire, at regular 4-ply prices.

Q. Do you sell any Chevron stations which advertise Atlas tires?

A. I do.

Q. What is the name of the station or stations to which you sell your products which fit this description?

A. I sell one station known as the Indio Truck Center at Indio, California.

Q. Do you happen to know who operates that station?

A. There are two partners there, Mr. Kendry and Mr. Soronson.

Q. Does this station advertise Atlas tires?

[fol. 1052] A. They do. It does.

Q. When did you first call on this station?

A. I called upon them about a week after I went to work for the J. N. Ceazan Company last September.

Q. Well, did you sell them at that time?

A. I did.

Q. What did you sell him?

A. I sold him Dayton tires and tubes.

Q. Do you now sell him Dayton truck tires and tubes?

A. I do.

Q. Have you sold him any tires other than truck tires and tubes?

A. No, sir.

Q. Have you tried to sell him any passenger car tires at any time?

A. I have.

Q. Have you had any conversation with him as to the reasons why you couldn't sell him or you did not sell him passenger tires?

A. I have.

Q. When did such conversation take place, approximately?

A. About the middle of February.

Q. Of what year?

A. This year.

[fol. 1053] Q. Where did such conversations transpire?

A. In his station at Indio.

Q. Who was present?

A. Mr. Soronson.

Q. What were those conversations?

A. Well, I asked him—

Mr. Hall: That is objected to as hearsay.

The Court: Overruled.

The Witness: I asked him to take the entire line, and he said, well, after all, he had to buy some stuff from Standard, but that he would buy the truck tires because he liked them and could sell them.

By Mr. Thody:

Q. Now, how many years have you been in the tire business, Mr. Winchester?

A. Since 1946.

Q. How many years have you been a salesman for tires, automobile tires?

A. Since 1925.

Q. How long have you been associated with the J. N. Ceazan Company?

A. I went to work for them the 23rd of September, 1947.

Q. What company were you previously connected with?

A. I was with the Charles Morgan & Son Company, 1038 East Olympic.

Q. For how long?

[fol. 1054] A. Since—from May '38 until August '46.

Q. How many Chevron accounts which sell Atlas tires do you now sell?

A. One.

Q. How many Chevron stations of the type that sell Atlas batteries do you now sell?

A. None.

Mr. Thody: You may have the witness, Mr. Hall. Oh, pardon me just one moment.

By Mr. Thody:

Q. In each of the cases I have referred to, the Peterson case, and the Ramona Boulevard, and Lamb on Olympic, and the Indio station, which we have discussed, has there been at any time any dissatisfaction expressed on the Dayton tires——

A. No, sir.

Q. By those people?

A. No, sir.

Mr. Thody: The government moves at this time, your Honor, that Government's Exhibit 70, for identification, be admitted into evidence.

Mr. Hall: Each and all of the documents are objected to

on the ground they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: Exhibit 70 in evidence.

Mr. Hall: Are you done, Mr. Thody?

[fol. 1055] Mr. Thody: Yes.

Cross examination.

By Mr. Hall:

Q. Will you describe this advertising program which you say is offered to the dealers handling Dayton tires?

A. Yes. If the dealer wishes to advertise Dayton tires over the firm name in a newspaper, a local newspaper, on presentation of that tear sheet, accompanied by his paid bill, we will pay 70 per cent of it either in a check to him or a credit to his account.

Q. That applies to local advertising only?

A. Yes, sir.

Q. Is there any top limit on what the company will pay?

A. No, sir.

Q. Do you do that for all dealers handling Dayton tires, if they want it done?

A. Yes, sir.

Q. Now, you spoke of a painting of dealers' buildings, and I understand you to say that was done sometimes?

A. I may not have been clear. I mean a painting of a sign on his building.

Q. Oh, a painting of a sign on the building?

A. Yes.

Q. That would be a Dayton sign?

[fol. 1056] A. Dayton sign, yes, sir.

Q. How large would that be?

A. There is no limit set on that.

Q. I beg pardon?

A. No limit.

Q. Well, that would be done only for a dealer that sold your Dayton tires, would it?

A. Yes, sir.

Q. If he was selling some other type of tires he wouldn't get it done by your people?

A. If he was selling enough Dayton tires to warrant paying 30 per cent of it, he would.

The Court: In other words, that does not apply to exclusive dealers only?

The Witness: No, sir.

By Mr. Hall:

Q. What is this franchise you spoke of, the Dayton franchise?

A. That is merely a written provision, a printed franchise, filled out with the dealer's name, setting forth the terms under which we would like to have him operate as a Dayton distributor; in other words, specifying that he give adequate tire service and that we will furnish him with certain advertising.

Q. Is that franchise put out by the Dayton Company or by the Ceazan Company?

[fol. 1057] A. By the Dayton Company.

Q. What does the dealer have to promise in order to get one of those franchises?

A. All he has to promise is to identify his place as a Dayton distributor, and to render adequate tire service and to maintain reasonable stock.

Q. A reasonable stock?

A. That's right.

Q. Is it common for a dealer to have one of those Dayton franchises and handle other competitive lines of tires?

A. It is not.

Q. It is not, you say?

A. No, sir. May I add a comment to that?

Q. Surely.

A. I might say in conjunction with the franchise, a franchise is offered to a dealer who asks for it. It is not mandatory on anyone's part.

Q. I can hardly hear what you say, Mr. Winchester. Will you speak a little louder, please?

A. It is not mandatory that he sign a contract with us. I mean we wouldn't force him to sign a contract. He may have it if he wishes.

Q. Yes. But when he gets it, he usually is an exclusive dealer for Dayton products?

A. Nothing is said about exclusive.

[fol. 1058] Q. I didn't ask you that. I asked you what the practice was. Does he handle other tires?

A. He can, but he doesn't.

Q. I am asking what he does. He doesn't usually handle other tires?

A. That's right.

Q. And isn't that for the reason that in handling an adequate stock he doesn't have the room or the financing to handle any other type of products?

Mr. Thody: That is objected to.

The Court: Overruled.

The Witness: No, sir, it isn't.

By Mr. Hall:

Q. I am not correct?

A. No, sir.

Q. What do you say is the reason why he doesn't handle another line of competitive products when he has one of these franchises?

A. Because he makes more money with Dayton.

The Court: That is a plug for your products, isn't it?

Mr. Thody: In the—

Mr. Hall: Just a minute.

Mr. Thody: I am sorry.

By Mr. Hall:

Q. Does the Ceazan Company sell or consign merchandise?

A. Sell.

[fol. 1059] Q. Do they ever consign?

A. Have they ever or do they ever?

Q. Do they ever?

A. No, sir.

Q. Have you with you one of those franchises you have spoken of?

A. I have one in my car across the street. I don't have one with me.

Q. Will you bring it in and produce it a little bit later?

A. I will be glad to.

Q. Do you have an agreement that you use when the dealer paints his station and gets a part of the paint costs from you people?

A. Nothing other than the sign, the Dayton sign.

Q. Well, do you sign any kind of an agreement with him when that arrangement is carried out?

A. No, sir. We do on the electric sign, but not on the paint job.

Q. Now, it is only a dealer that sells a certain quantity of your goods that gets one of these neon signs, isn't it?

A. No, sir.

Q. What is the arrangement on the neon sign?

A. We use our own judgment on that. If he looks like [fol. 1060] he has potential possibilities there, and he has a good spot, it is to our advantage to have that sign up there as much as him, so we use our own judgment as to the location of the sign. If it is good enough, we will give it to him.

Q. Are there any of those signs up in cases where the dealer is handling competitive tires?

A. I can't answer that question. There is none in my territory.

Q. There is none in your territory?

A. No, sir, that is, not that I know of. There may be some in the city. I don't know.

Q. What does the dealer have to pay when a neon sign is put up towards the upkeep of the neon sign, if anything?

A. The sign is sent to him prepaid. All he agrees to do, he signs a lease agreement on that, that he will erect the sign and maintain it as long as he sells our product.

Q. He pays the maintenance of the sign?

A. The electric power, yes, sir.

Q. The cost of operation?

A. That's right.

Q. Have you got one of those neon contracts in your car?

A. No, sir, I do not have.

Q. You have one available, haven't you?

A. At the office.

[fol. 1061] Mr. Hall: All right. Will you produce one of those?

Mr. Thody: That is objected to.

Mr. Hall: I want the franchise from the Dayton people and I want the neon sign agreement.

Mr. Thody: I object, your Honor, to the production of these documents as certainly irrelevant and immaterial and outside the scope of the pleadings in this case.

The Court: I can't tell until I see them whether they have any relevancy. They are not being offered in evidence now.

He is asking the man to produce them and the man is willing to produce them.

Mr. Hall: I assume the gentleman would rather produce them now than be subpoenaed at a later stage of the proceedings. We can, of course, do that.

The Court: If he has them available, he can bring them in.

I am about to declare a recess when you have finished with him. Have you finished with him?

Mr. Hall: I have finished with him, yes, your Honor.

The Court: Any redirect?

Mr. Thody: Just one question.

Redirect examination.

By Mr. Thody:

Q. Mr. Winchester, in connection with your sale of the Dayton tires to the Indio station, did you furnish or did [fol. 1062] you not furnish any advertising?

A. No, sir.

Q. Did you attempt to furnish advertising?

A. We offered it.

Q. Was it accepted or declined?

A. Declined.

Mr. Thody: That is all.

The Court: All right. Step down.

The Witness: Shall I bring that in?

The Court: Yes, you bring it in and show it to counsel.

Gentlemen, I will now declare a short recess. I forgot to call a matter that was set for 2:00 o'clock and counsel are here. You may be excused for a few minutes.

(A short recess was taken.)

[fol. 1063] Mr. Thody: May the record show, your Honor, that during the recess period Mr. Winchester obtained a copy of the document entitled "Dayton Franchise" as requested by counsel for the defendants?

Mr. Hall: Did he obtain the Neon agreement, Mr. Thody?

Mr. Thody: He did not, but he has an explanation for that, Mr. Hall, which I will let the witness give to you.

Q. Were you able to obtain, Mr. Winchester, a copy of the Neon sign lease agreement that you referred to in your earlier testimony?

A. No, sir; I was not. I did not have one in my car. I would have to get that from the general office.

By Mr. Hall:

Q. I show you a document, Mr. Winchester, bearing at the top the words "Dayton Franchise." Is that the franchise that you have referred to in your previous testimony?

A. It is.

Mr. Hall: I ask that the document be marked as an exhibit for identification only.

The Court: All right. Is this the first exhibit for the defense?

The Clerk: Apparently, sir. Defendants' A marked for identification.

The Court: A.

Mr. Thody: Are you through with him, Mr. Hall?

[fol. 1064] Mr. Hall: Yes.

By Mr. Thody:

Q. Mr. Winchester, calling your attention to your testimony concerning the Dayton franchise, can dealers or distributors operating under this franchise handle other tires or tubes?

A. Yes, sir.

Q. Can they handle other batteries other than manufactured by Dayton?

A. Yes, sir.

Mr. Hall: Well, wait a minute, wait a minute. That calls for an interpretation of the document itself, your Honor, and I move to strike the last answer of the witness, and object to this question on that ground.

The Court: Overruled.

Mr. Thody: That is all.

Mr. Hall: That is all.

The Court: All right, call your next witness.

Mr. Thody: The Government now wishes to call Mr. Hugh Hall.

Hugh Hall, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Hugh Hall.

The Clerk: That is H-u-g-h, and the spelling of the last [fol. 1065] name?

The Witness: H-a-l-l.

Direct examination.

By Mr. Thody:

Q. Where do you reside, Mr. Hall?

A. 1026 East Polk Street, Phoenix, Arizona.

Q. By whom are you employed or what is your occupation?

A. I am a salesman with the Motor Supply Company.

Q. How long have you served with the Motor Supply Company?

A. About seven years, broken service.

Q. And where is the Motor Supply Company located?

A. 315 North Central Avenue, Phoenix.

Q. Are you acquainted generally with the products sold by the Motor Supply Company?

A. I am?

Q. Can you describe the nature of those products to the court at this time, please?

A. A complete line of automotive parts and accessories, tires, batteries, and oil.

Q. Are you acquainted with the brands of these various products?

A. I am.

Q. What brand of oil does the Motor Supply Company sell?

[fol. 1066] A. Pennzoil.

Q. What brand of tire?

A. Fisk.

Q. And what brand of tubes?

A. Fisk.

Q. What brand of batteries?

A. Auto-Lite.

Q. And what brand or brands of automotive accessories does your company sell?

A. Numerous ones.

Q. Can you describe some of them?

A. Gates fanbelts, McQueen-Norris engine parts, Velva-Touch metallic lining.

Q. Can you speak louder?

A. Velva-Touch metallic lining, Thermoid lining, asbestos.

Q. Do you have a line of polishes and waxes?

A. Yes; we have the color-glow line.

Q. Do you have a brand of chemicals?

A. Yes; we have the Circo line.

Q. Do you have a territory or a sales area which you cover for the Motor Supply Company?

A. I do.

Q. Can you describe where this territory is?

A. It is a portion of Phoenix, Central Avenue and [fol. 1067] Tempe, and Van Buren to South Manhattan.

Q. Have you had any previous territories, previous assignments?

A. Yes.

Q. Where were they?

A. Tempe, Chandler, Mesa, Scottsdale and surrounding area.

Q. What type outlets do you sell your products of Motor Supply Company to?

A. Service stations and garages.

Q. How do you operate generally?

A. By schedule of—I have tried to route my territory, covering my service stations the first part of the week and the garages the latter part of the week.

Q. Do you make personal contacts.

A. Yes; I do.

Q. Do you know of your own personal knowledge how many salesmen are now employed by the Motor Supply Company?

A. In Phoenix?

Q. Well, first, in Phoenix; yes.

A. 10.

Q. Do you know of your own personal knowledge the area that is sold by the Motor Supply Company?

A. Arizona.

Q. Is that the entire state of Arizona?

[fol. 1068] A. The entire state of Arizona.

Q. Do you know of your own personal knowledge how many salesmen the Motor Supply Company has operating in the State of Arizona?

A. Yes.

Q. How many?

A. 18.

Q. Do or do not these salesmen operate more or less in the same manner that you do?

A. Yes.

Q. Do you have instructions from your company as to the method under which you should operate?

A. Yes.

Q. Approximately how many calls do you make on service stations, garages and so on per day?

A. Oh, six to 10.

Q. Do you go out and sell or attempt to sell your products each and every day?

A. Yes.

Q. Have you visited a service station located on the southeast corner of Washington and 32nd Streets in Phoenix, Arizona?

A. Yes.

Q. By whom is that operated?

A. Gene Howard.

[fol. 1069] Mr. Thody: At this time the Government wishes to have marked as Government's exhibit for identification dealer agreement TBA dated November 14, 1947, and the accompanying documents attached thereto, executed between the Standard Oil Company and E. R. Howard.

The Clerk: Government's 71 for identification.

By Mr. Thody:

Q. When did you call upon this station, Mr. Hall?

A. Approximately February of this year.

Q. Did you attempt to sell your product at that time?

A. I did.

Q. Which products did you attempt to sell?

A. Pennzoil, Fisk tires, Auto-Lite batteries, Gates fanbelts.

Q. And to whom did you talk?

A. Mr. Gene Howard.

Q. Did you sell your products at the time of this visit?

A. No; I did not.

Q. Did you have any conversations as to why you could not sell your products?

A. I did.

Q. Where did such conversations take place?

A. At his place of business, 32nd and East Washington.

Q. And when did you say that was?

[fol. 1070] A. In approximately February.

Q. When in February?

A. The early part of February.

Q. And who was present?

A. Myself, Gene Howard, a gentleman from the Gates Rubber Company, Mr. Jesperson and Bill Fouts, our Pennzoil salesman and truck representative.

Q. What was said at this time?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

Mr. Thody: You may answer.

The Witness: I don't catch you.

Mr. Thody: You may answer. What was said at that time?

A. Well, we presented our story of Pennzoil to Mr. Howard and asked him if he thought he could use Pennzoil, and he said he had had calls for it in the past but that he was unable to handle the product due to an agreement in his contract.

Q. Was there any mention at that time on the reasons why you could not sell your tires and tubes?

A. Later in the conversation we asked him about his tires and tubes and batteries, and he said, "Well, the same setup applies to them," referring to his contract.

Q. You mean the same setup as what?

A. As the oil; he couldn't handle it.

[fol. 1071] Q. Did you have any discussion with reference to any of your other products?

A. Yes; we talked about our Gates fanbelts.

Q. What was said about the Gates fanbelts?

A. Well, he seemed to be a little doubtful as to whether it was all right for him to handle Gates fanbelts or not at the present time. That was when we were talking to him. But he did agree for us to go ahead and put up the racks upon which they hang the fanbelts, and if we would check with him later, maybe he could buy the belts from us.

Q. Have you supplied him with any fanbelts?

A. No.

Q. Does he still have your rack?

A. Yes.

Q. Have you ever called upon the Cox Garage located at Central and Madison Streets in Phoenix?

A. I have.

Q. Have you sold him any products?

A. Yes.

Q. What products have you sold?

A. I sold him two tires.

Q. And when did you sell the tires?

A. Oh, approximately January, '46.

Q. Do you sell him any tires now?

A. No.

[fol. 1072] Q. Have you tried to sell him anything since 1946?

A. Yes.

Q. How often?

A. Oh, every two months, approximately.

Q. Have you ever talked to him about the reasons why you could not make future sales?

A. I have.

Q. When did you talk to him about this?

A. On numerous occasions. The last was approximately January of this year.

Q. Approximately when in January?

A. Well, the 15th.

Q. Where did this conversation take place?

A. At Wayne's Midway Inn in Phoenix.

Q. And what is the Wayne's Midway Inn?

A. Well, he is—the gentleman we are speaking of, Mr. Sammy Kroll (?) has an orchestra he conducts nights and—

Q. Well, first of all, who is this Mr. Sammy Kroll?

A. He is the partner in this Cox Service, this Cox Garage that we are talking about.

Q. Is he the party with whom you have been dealing previously?

A. Yes.

Q. And he is the party who has purchased your tires on the previous occasions?

[fol. 1073] A. Yes.

Q. And who was present at that conversation in the night club?

A. Mr. Kroll and myself.

Q. How did you happen to speak to him then?

A. Well, we are friends outside of business.

Q. Were you attempting to solicit him at that time personally?

A. Not when we struck up our conversation; no. The conversation led to the business point.

Q. And when was this?

A. January 15th, I would say, or thereabouts, this year.

Q. Did he ascribe any reasons as to why he did not purchase further Fisk tires from you?

A. Yes.

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

By Mr. Thody:

Q. What were those conversations?

A. He said that he couldn't buy tires from us; that he has Atlas tires, lots of them.

Q. He said he had lots of them. Did you ask him to purchase further Fisk tires at that time?

A. Yes.

Q. Do you mean he had lots of them?

[fol. 1074] A. Well, the way I understand it, he cannot buy tires—

Mr. Hall: Now, just a minute.

The Court: No; you can't state that.

Mr. Hall: We object to the understanding.

[fol. 1075] By Mr. Thody:

Q. Did he have lots of Atlas tires in January, 1946 when he made his initial purchase from you?

A. No.

Q. Did he have any Atlas tires that you could see in his station at that time?

A. No.

Q. Have you continued to solicit this account since that time?

A. Yes.

Q. Have you sold any further merchandise?

A. No.

Mr. Thody: At this time, your Honor, the government moves that Government's Exhibit No. 71, for identification, be admitted into evidence.

Mr. Hall: The defendant objects to each and all of the documents so offered on the ground they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: Government's Exhibit 71 in evidence.

By Mr. Thody:

Q. Mr. Hall, was there ever any dissatisfaction expressed *by* you as to the Fiske tires which you supplied to Sammie Kroll?

A. Yes.

Q. There was dissatisfaction?

A. Satisfaction. Oh, no dissatisfaction, no. I didn't [fol. 1076] understand you.

Q. Was he perfectly happy or unhappy?

A. Definitely satisfied.

Mr. Thody: That is all.

Mr. Hall: That is all.

The Court: Step down. Call your next witness.

Mr. Somerville: The government calls Kenneth Smith. Your Honor please, we are putting Mr. Smith on a little out of order because he has a medical problem and his home is in Seattle, so we want to dispose of him this afternoon.

The Court: Very well.

Kenneth Senior Smith, called as a witness by the plaintiff, being first duly sworn, testified as follows:

Direct examination.

The Clerk: Take the stand, please. What is your name, please?

The Witness: Kenneth Senior Smith.

The Clerk: How do you spell your middle name?

The Witness: S-e-n-i-o-r.

The Clerk: How do you spell your last name?

The Witness: S-m-i-t-h.

By Mr. Somerville:

Q. Where do you reside, Mr. Smith?

[fol. 1077] A. Everett, Washington.

Q. What is your occupation or employment?

A. Salesman for Largent & Moorman, Service Station Supplies, and a Chevron station operator.

Q. And a Chevron station operator?

A. That's right.

Q. Where is your Chevron station located?

Mr. Hall: I thought he said he was a salesman for somebody.

Mr. Somerville: He did, and he said a Chevron operator also.

By Mr. Somerville:

Q. Where is your station located?

A. 7515 U. S. 99 South, Everett, Washington.

Q. In response to a subpoena did you produce documents covering your service station?

A. Yes, I did.

Mr. Somerville: The government asks that these documents entitled Petroleum Products and Equipment Agreement, dated September 5, 1944, between Standard Oil Company of California and Fred Erickson, and an accompanying document which is an assignment to Kenneth S. Smith from Emil Bovela of certain agreements, including a Petroleum Products Equipment Agreement dated September 5, 1944, and this document appears to bear no date, but it is effective as of March 1, 1948—I would like to have these marked for identification.

[fol. 1078] The Clerk: Government's Exhibit 72, for identification.

Mr. Somerville: I would like as a part of that same exhibit an additional document which appears to be a receipt for equipment dated 3-19-48.

The Clerk: So marked.

By Mr. Somerville:

Q. When did you take over the operation of this service station, Mr. Smith?

A. The 20th of February.

Q. What year?

A. 1948.

Q. And do you own the property?

A. That's right; buying it on contract.

Q. Of what does the service station consist?

A. Gasoline pumps and oil, and the front is a grocery store.

Q. You don't have any lubricating equipment?

A. No, no lubricating.

Q. When did you commence to dispense gasoline at this station?

A. On the 18th of February, two days before.

Q. At any time preceding the execution of the agreement which you have produced, or thereafter, were any instructions given you with respect to the handling of competitive petroleum products?

A. Yes, I was told—

[fol. 1079] Mr. Hall: Just a minute. Just the word "Yes" is all that is called for.

By Mr. Somerville:

Q. When were these instructions given you?

A. Well, approximately within 30 days; sometime in the first 30 days.

Q. 30 days after signing the agreement?

A. No, in between there, and also afterwards.

Q. And where were these instructions given you and by whom?

A. In the Standard Oil Company office.

Q. In Seattle?

A. In Everett.

Q. And who were present?

A. Mr. Shaw.

Q. And who is Mr. Shaw?

A. He is a company representative for the territory north of Seattle.

Q. Were there any further representatives present?

A. I don't remember. At the time I doubt if there were.

Q. What, if any, conversations were held at this time with respect to your handling of petroleum products?

A. Well, I hadn't signed the contract at that time, and I was considering a change. I wanted to break the contract [fol. 1080] and take some other, and he explained to me that the contract covered all petroleum products on that property, and I couldn't handle any other, and, of course, the contract—for all I hadn't signed it—was supposed to

be binding because I had bought the property and I suppose the contract with it.

Q. So far as you were concerned, the contract represented the gasoline pumps, is that it?

A. That's right.

Q. You subsequently signed the contract, as the record shows?

A. Yes, later I did.

Q. And have you handled competitive oils?

A. I have handled competitive oils in the station, yes.

Q. Have you received calls for competitive oils?

A. That's right. Yes, I have.

Q. What brands of oils were called for by your customers?

A. Well, Pennzoil in particular. I use that in my own car. That's why I have it there, so maybe that's why—

Q. You don't stock that oil for your customers?

A. No, not for that, no.

Q. Calling your attention to your duties as salesman for Largent & Moorman, how long have you been a salesman for this company?

A. Two years.

[fol. 1081] Q. And what business is this company engaged in?

A. Service station supplies and equipment.

Q. What are some of the items that are handled by this company?

A. Tires, batteries, fan belts, oil filter elements, oil filters, brake fluid.

Q. Do you happen to know what brand of tires and the source of the tires that are handled?

A. Miller tires, from the Miller Rubber Company in Los Angeles.

Q. And what type of batteries?

A. National batteries.

Q. From where are those received?

A. Salem, Oregon.

Q. What brand of oil filters are handled and from where are they received?

A. The Purolator and Fram's.

Q. And what brand of fan belts?

A. Gates from Denver, Colorado, and Crown—I don't know where they are from.

Q. What is the area to which your sales efforts are confined?

A. The University district, the north end of Seattle.

Q. And what class of trade does Largent & Moorman attempt to sell?

[fol. 1082] A. Service stations, practically exclusively.

Q. Does that include service stations at which Standard Oil products are dispensed, the Chevron stations?

A. Yes, sir, it does.

Q. Do you yourself make calls on Chevron stations?

A. Yes, I do.

Q. Have you at any time called on a service station operated by John Scholtens at 95th and 35th Avenue Northeast, Seattle, Washington?

A. Yes.

Mr. Somerville: At this point, your Honor, we would like to have marked for identification a lease dated August 20, 1946, between John Scholtens and Louise Scholtens, his wife, lessor, and Standard Oil Company of California, lessee; a sublease dated August 20, 1946, between Standard Oil Company, lessor, and John Scholtens and Louise Scholtens, his wife, lessee; a letter agreement concerning this property dated August 19, 1947, addressed to John Scholtens and Mrs. Louise Scholtens, and signed by W. G. Watson, Attorney-in-fact for the Standard Oil Company; and a dealer agreement TBA dated August 20, 1946, between Standard Oil Company of California and John Scholtens, and certain other documents also covering this property.

The Clerk: That is Government's Exhibit 73, marked for identification.

[fol. 1083] Mr. Somerville: The government offers in evidence Government's Exhibit 72 for identification.

Mr. Hall: Objected to as irrelevant and immaterial.

The Court: Overruled.

The Clerk: Exhibit 72 in evidence.

By Mr. Somerville:

Q. When did you first call on this service station operated by Mr. Scholtens in approximately August, 1947?

A. Maybe it was September. It was around August or September.

Q. At this time did you sell him any products?

A. I sold him some equipment. He was just opening up his station, or was getting ready to open it up.

Q. By "equipment" do you mean equipment for resale or for his own use?

A. No, equipment for his own use, for the station.

Q. Did you at this time attempt to sell him for resale any tires, batteries or miscellaneous accessories?

A. No.

Q. Did you call on Mr. Scholtens subsequently?

A. Yes, when he opened the station a month or so later, I called on him.

Q. At that time did you make an effort to stock your products in that station?

A. Yes, I did.

[fol. 1084] Q. Were you successful?

A. On some. Just on a part of the stock, on certain things he was unable to get from Standard.

Q. Were any conversations held with respect to his maintaining a regular stock of some of the items handled by your company?

A. Yes. They were—

Q. Where were these conversations held?

A. In his service station.

Q. Were any other parties present?

A. No.

Q. With respect to the time involved, how long was this after your first call in August?

A. Well, I would say about a month later.

Q. What was the nature of the conversation?

A. He explained to me that certain things he had to buy from Standard—

Mr. Hall: Just a minute. I object to that conversation on the ground it is hearsay.

The Court: Overruled.

Mr. Somerville: You may answer.

The Witness: What am I supposed to say now? I don't get—

The Court: You are supposed to answer the question.

Mr. Somerville: If you will read the question back, please.

[fol. 1085] (The question and answer were read.)

The Witness: (Continuing)—and that when he couldn't obtain these things from Standard, he would do business

with me, but he had—he was heavily in debt and had just opened up the service station, and he felt that it was kind of binding, that he couldn't—that he had to buy from them.

By Mr. Somerville:

Q. Heavily in debt to whom?

A. Evidently—I understood, or it was evidently to Standard, or they had helped him in building the station; probably signed the—gone good for it to the bank, I presume.

Mr. Hall: I move to strike the answer to the question because it appears therefrom that his answer is based on conclusions.

The Court: Yes, I will strike it, unless he told him that.

By Mr. Somerville:

Q. You were unable to interest Mr. Scholtens in stocking as a regular matter your products?

A. That's right.

Q. Have you ever called upon a service station operated by James Nelson at 83rd and Greenwood in Seattle?

A. Yes.

Mr. Somerville: The government offers for identification dealer agreement TBA, dated October 14, 1947, between Standard Oil Company of California and James C. Nelson, [fol. 1085a] and an agreement of conditional sale between Standard Oil Company of California and James Nelson, covering property at 8301 Greenwood Avenue, Seattle.

The Clerk: Government's Exhibit 74, marked for identification.

By Mr. Somerville:

Q. When did you first call on Mr. Nelson?

A. Last October or November; November, I guess it was.

Q. Were you successful or unsuccessful in selling your products?

A. I sold him some tools.

Q. At that time did you endeavor to sell him resale items?

A. Yes, I did.

Q. Were any conversations held with respect to his maintaining a regular stock of those items?

A. Yes.
Q. Where were these conversations held?
A. In his service station.
Q. Were any other parties present?
A. No.
Q. What was the nature of those conversations?

Mr. Hall: Objected to as hearsay.
The Court: Overruled.

[fol. 1086] By Mr. Somerville:

Q. You may answer.
A. He stated that he couldn't stock my merchandise because he was tied up with Standard and had to stock their merchandise when it was available.
Q. At any time thereafter were you able to sell him any of your products?
A. Yes, I sold him some batteries.
Q. When did this occur?
A. I don't know. I sold those one or two weeks later; the next time I called on him, probably.
Q. These were the Autolite batteries?
A. The National batteries.
Q. The National batteries. At that time did you observe whether or not Atlas batteries of the same type or same sizes were handled at his station?
A. No. He told me at the time—
Q. Were any conversations held with respect to the handling of these batteries at that time?
A. Yes.
Q. Who was present?
A. Nobody.
Q. Except Mr. Nelson?
A. That's right. Mr. Nelson and myself.
Q. And these were also held in the service station?
A. Yes.
[fol. 1087] Q. What were those conversations?

Mr. Hall: Objected to as hearsay.
The Court: Overruled.

The Witness: He stated or asked me to send certain sizes of batteries because he was unable to get that size from Standard at this time, and so he filled in his supply with National batteries of the size he was out of.

By Mr. Somerville:

Q. Thereafter did you attempt to make further sales of those batteries?

A. That's right, I did.

Q. Were you successful or unsuccessful?

A. I was unsuccessful.

Q. At that time was anything said with respect to whether or not supplies of Atlas batteries were available?

A. Yes, he—

Q. When did such conversations occur?

A. Oh, about a month later.

Q. Also at the Chevron station?

A. That's right.

Q. Were any other parties present?

A. No.

Q. What was said?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

The Witness: He said, "No, I can't buy any of your [fol. 1088] batteries now. Standard has their batteries in stock, and I have to handle them."

By Mr. Somerville:

Q. Are you familiar with the respective competitive qualities of Atlas batteries and other batteries on the market?

A. Yes.

Q. Are National batteries comparable to batteries handled under the Atlas brand name?

A. Yes, they are.

Q. Did Mr. Nelson express any dissatisfaction with the batteries that you sold him?

A. No, he didn't.

Q. And you have been unsuccessful in selling him any further batteries?

A. That's right.

Mr. Somerville: That will be all.

Oh, at this point I would like to offer in evidence Government's Exhibit 73, for identification.

The Court: It may be received.

Mr. Hall: The defendants object to each and all of the

documents so offered on the ground they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: 73 in evidence.

Mr. Hall: Were you done with your examination, Mr. [fol. 1089] Somerville?

Mr. Somerville: Just a moment.

By Mr. Somerville:

Q. Mr. Smith, I would like to ask you a question or two with respect to the oil, the Pennzoil I think you testified to, which you handle at your station. Was this supply of oil maintained to satisfy particular customer demand other than your own?

A. In the first place, it was for my own use, until I had requests for other oil. One particular customer asked me if I had anything other than RPM or Standard Penn, and I said, "Yes, I have Pennzoil, which I use in my own car. I can let you have some of that." She said, "That's fine. That is the kind of oil I prefer, and that is what I use myself." So then I started handling it after that.

Q. Have other customers requested Pennzoil?

A. They have requested other oils. I wouldn't say definitely Pennzoil, but they have requested other oils.

Q. So far as you know, was this the only definite request for Pennzoil?

A. Yes, I think so. Probably that is the only request without seeing it. You get plenty of requests if you display it.

Q. You have testified to certain instructions that were given you with respect to this oil. You have never openly displayed any Pennzoil, have you?

[fol. 1090] A. No, that's right.

Q. Have you had salesmen for Pennzoil and other oil companies call at your station?

A. There has probably, but I am not there much because I am away selling, you see, on this other job, so I couldn't say on that.

Mr. Somerville: That is all.

The Court: Any questions, Mr. Hall?

Cross examination.

By Mr. Hall:

Q. Did you say that you were the owner of the property where this station is located that is referred to in Exhibit 72?

A. At 7515 U. S. 99 South, Everett?

Q. I will show you Exhibit 72 and you tell me whether you are the owner of the property that is referred to in those papers.

A. Yes. You see, this address is changed since it used to be Route 3. It isn't any more.

Q. Now, you acquired that property the last of March, did you?

A. February the 20th.

Q. Now, from whom did you acquire the property?

A. Emil Bovela.

Q. Now, if I understood you correctly, you testified [fol. 1091] on direct examination that you didn't want to sign any papers with Standard Oil Company when you took over the property; is that right?

A. That's right. In fact, I told them before I took it over.

Q. Whom did you tell that to, Standard or Mr. Bovela.

A. Both. Mainly to Standard. I went down to the office personally to see about it.

Q. Why did you take over the property if you didn't want to take over the paper?

A. Because I believed the contract could be broken.

Q. You operate some other kind of business, do you, in connection with the service station?

A. A grocery store.

Q. A grocery store. How many pumps do you have there?

A. Two.

Q. Do you sell any tires, tubes, batteries or accessories in that service station?

A. A few. Not—a few, yes; not much in accessories. I sell a few tires once in a while.

Q. Atlas tires, or some other brand?

A. No. I wanted to sell Atlas. They told me I have to sign the TBA agreement or else I wouldn't be able to, so I called Firestone, and I buy my tires from Firestone.

Q. So you sell Firestone tires?

[fol. 1092] A. That's right.

Q. Now, what batteries are on the market up there in your area competing with the batteries that you sell for your firm?

[fol. 1093] A. Auto-Lite and Hobbs, all kind of them.

Q. Well, what are some of them? Name some of them.

A. Auto-Lite, Hobbs, Atlas, Mobil, Signals, States.

Q. Can you think of any others?

A. Olympic.

Q. Who first told you about this lawsuit?

A. Gosh! I don't know. You have got me there all right. I don't know.

Q. Who asked you to come here?

A. I was subpoenaed.

Q. Did you have some conversation with anybody about this lawsuit before the subpoena was served on you?

A. No; not about the lawsuit, not that there was any suit. I was questioned about my dealings with Standard Oil.

Q. Who questioned you, somebody from the FBI?

A. That is right.

The Court: That was in Everett you were subpoenaed?

The Witness: That was in Everett.

Mr. Hall: I am sorry. I could not hear the judge's questions.

The Court: I asked the witness if it was in Everett that they subpoenaed him.

By Mr. Hall:

Q. As I understand your testimony now, Mr. Bovela would not sell you the property unless you would take over the contract; am I clear about that?

[fol. 1094] A. No. It was nothing to Mr. Bovela whether I took over the contract or not. That was beside the point. I was just buying the property from Bovela. He did not care what I did with Standard Oil.

Q. Well, did somebody tell you you could not buy the property without signing up a contract with the Standard Oil Company?

A. No. They didn't say anything about buying property.

Q. Well, you wanted the property, didn't you?

A. I wanted the property; that is right.

Q. Yes. And you did not want the contract with the Standard Oil Company?

A. That is right.

Q. Now, why didn't you buy the property without signing up with Standard Oil Company?

A. I did. If you will notice, I didn't sign any contract until over a month afterwards.

Q. Why did you sign it then?

A. You want to know?

Q. Yes.

A. All right. They wouldn't put in any restrooms; they wouldn't do anything for me, and they said: Well, they would loan me $500 to put in restrooms but I would have to sign a contract before it could go to the home office to even be considered. So I signed the contract but I didn't [fol. 1095] get my restrooms.

Q. Oh, then, you wanted to sign up with the Standard Oil, is that right?

A. No; I didn't want to, but I wanted the restrooms in the place.

Q. Oh, you did, whether you signed with Standard or not, you wanted the restrooms?

A. That is right.

Q. Were there any restrooms in there before you took over the pumps?

A. No; there was not.

Mr. Hall: That is all

Redirect examination.

By Mr. Somerville:

Q. Mr. Smith, was there a definite promise made to you to put in those restrooms before you signed this agreement?

A. No. It was only understood that—

Mr. Hall: Now, just a minute. Not what it was understood.

The Witness: All right.

The Court: He asked for what you know.

The Witness: It was said then it had to be submitted—

Mr. Hall: Wait a minute, wait a minute. If you are going into some conversation here I would like the foundation laid.

[fol. 1096] The Court: He is talking about the same thing. He has already laid the foundation. Go ahead.

By Mr. Somerville:

Q. What did they say?

A. Mr. Shore said in order to submit it to the office I would have to sign the contract first, and then I would have to take my chance on whether I got the restrooms or not.

The Court: That is all.

Mr. Somerville: I have one more question.

Q. So you did sign the agreement that you produced, Government's Exhibit 72?

A. That is right.

Q. But did not get the restrooms?

A. That is right.

Mr. Somerville: That is all.

The Court: Call your next witness.

Mr. Somerville: At this point the Government offers into evidence Government's Exhibit 74 for identification.

Mr. Hall: Objected to as irrelevant and immaterial.

The Court: Overruled.

The Clerk: 74 in evidence.

Mr. Driscoll: The Government will call Mr. Hal K. Tanner.

HAL K. TANNER, called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

[fol. 1097] The Witness: Hal K. Tanner.

The Clerk: Your first name is H-a-l?

The Witness: That is right.

The Clerk: Your middle initial?

The Witness: K.

The Clerk: Your last name, T-a-n-n-e-r?

The Witness: T-a-n-n-e-r.

Direct examination.

By Mr. Driscoll:

Q. Where is your residence, Mr. Tanner?

A. 450 South Grand Avenue in Pasadena.

Q. And your occupation or business?

A. I am division manager of the Dunlop Tire and Rubber Corporation for Los Angeles.

Q. Where is their division office located of which you are the manager?

A. 3744 Fruitland Avenue, Maywood.

Q. What is the relationship of this division office—what is the business of the Dunlop Tire and Rubber Company?

A. The Dunlop Tire and Rubber Company manufactures automobile tires, and in fact most all kinds of tires, pneumatic tires and tubes.

Q. Do they have territory representation under some brand name?

A. Yes.

[fol. 1098] Q. Where is the factory of the Dunlop Tire and Rubber Corporation located?

A. Buffalo, New York.

Q. And what is the relationship, if you will explain, Mr. Tanner, of this division here to the corporation's manufacturing plant at Buffalo?

A. This division is called a branch warehouse, where we store merchandise for sale to dealers.

Q. You are a direct representation of the factory.

A. Yes.

Q. What territory do you represent the factory in?

A. Southern California from Santa Maria, Delano and Bishop south, the entire State of Arizona, and three counties in Nevada.

Q. So that we may be clear on your products, what brand names are the tires and batteries distributed and sold under?

A. Dunlop.

Q. Where are the batteries manufactured and purchased?

A. In Vernon, California.

Q. Will you just explain to the court, Mr. Tanner, the sales organization that you have and the method and means by which you sell and distribute the Dunlop tires and batteries in the area to which you have testified?

A. We have four salesmen who solicit business from [fol. 1099] service stations, garages, tire dealers and recappers, and from their orders we make delivery out of the local warehouse by the common carriers.

Q. And those deliveries are made into what territories?

A. To the territory aforesaid mentioned.

Q. Including Southern Nevada and Arizona?

A. Yes.

Q. Are any shipments made direct from the factory or orders filled directly by shipment from Buffalo?

A. We have in the past shipped carload lots to both Arizona and California.

Q. How long have you been with the Dunlop Tire and Rubber Corporation?

A. Five and one-half years.

Q. Have you had any previous experience in the tire and battery business?

A. I have been in the tire business 27 years.

Q. I see. Are you familiar with the quality, the grade and merchandising attributes of the batteries which are sponsored by the Standard Oil Company of California and sold through their service station outlets under the brand name of Atlas?

A. Yes.

Q. In your opinion is your tire and battery merchandise-wise comparable and competitive to that Atlas brand?

[fol. 1100] A. Yes.

Q. How many salesmen do you have?

A. Four.

Q. Are those salesmen or are they not instructed, among other things, to contact and to sell or attempt to sell service station outlets?

A. Yes.

Q. Do you know if those instructions include sales or attempts to sell Chevron stations, dealer operated stations handling the petroleum products and the other sponsored products of Standard Oil Company?

A. The salesmen have reported calls on Chevron stations.

Q. Do you know whether they have been successful or unsuccessful in selling these outlets?

A. Very rarely.

The Court: You mean they are sold very rarely?

The Witness: Yes, sir.

The Court: Is that what you mean?

The Witness: Yes, your honor.

By Mr. Driscoll:

Q. Do you have any other products that your division office is responsible for the sale and distribution of other than tires or batteries?

A. Tubes, of course; and we have a line of chemical goods such as polishes, wax and so forth.

Q. Tell us, if you please, where are those waxes and [fol. 1101] polishes manufactured, then?

A. They are manufactured in the east and I am not sure exactly where.

Q. And are they shipped to you here for redistribution or directly to the retail outlets?

A. Yes; they are shipped from Buffalo to Los Angeles.

Q. For redistribution by you?

A. Yes.

Mr. Driscoll: I think that is all, your Honor. You may examine, Mr. Hall.

The Court: Cross examine.

Cross examination.

By Mr. Hall:

Q. I think you said the area that your branch covers is Southern California south of Santa Maria, three counties in Nevada and the State of Arizona, is that right?

A. South of Santa Maria, Delano, and Bishop.

Q. And three counties in Nevada, and Arizona, is that right?

A. Yes.

Q. How many accounts in that area did you sell in 1947?

A. Approximately 275.

Q. And how many did you sell in 1946?

A. Approximately 300 I would say.

[fol. 1102] Q. How many did you sell in 1942?

A. I don't know. I was not with the company until late in the year.

Q. Until what?

A. I joined the company in October, 1942, and I am not—

Q. How many did you sell in 1943?

A. Not being in my present position, I can't answer that.

Q. How long has this branch of the Dunlop Tire and Rubber Company been operating in Southern California?

A. 11 years that I know of, and I am sure they were here prior to that.

Q. What other batteries, to use counsel's expression, "comparable with and competitive with" your Dunlop batteries beside Atlas batteries?

A. Oh, Goodrich.

Q. The what?

A. Goodrich, the Goodyear, Firestone.

Q. Can you name some more?

A. Exide.

Q. Aren't there any others?

A. Willard.

Q. Well, go ahead and tell me some more.

A. That is about all I can think of right now,

[fol. 1103] Mr. Hall: That is all.

Redirect examination.

By Mr. Driscoll:

Q. Mr. Tanner, your factory is able to supply you with an adequate supply for your merchandising needs?

A. Yes.

Mr. Driscoll: That is all.

The Court: All right, step down.

[fol. 1104] Mr. Driscoll: Call Mr. L. A. Chamberlin.

Lester A. Chamberlin, called as a witness by and on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Lester A. Chamberlin.

The Clerk: C-h-a-m—

The Witness: b-e-r-l-i-n.

Direct examination.

By Mr. Driscoll:

Q. Where is your residence, Mr. Chamberlin?

A. At 140 North Bowling Green Way, Los Angeles.

Q. Your occupation?

A. Salesman for Dunlop Tire & Rubber Company.

Q. Do you work with the division branch? Excuse me; you heard Mr. Tanner's testimony?

A. Yes, sir.

Q. Do you work with the Dunlop Branch that he referred to?

A. Yes, sir; I work out of the branch.

Q. What territory is assigned to you as a salesman?

A. I cover the cities of Los Angeles, Burbank, Glendale, Huntington Park, Lynwood and Maywood.

Q. How long have you been in your present position with the Dunlop Tire & Rubber Company?

[fol. 1105] A. Approximately three and one-half years.

Q. In the course of your duties as salesman have you called upon a station located at 4346 West Pico operated by one Gilbert Olson?

A. Yes; I have called on Mr. Olson.

Mr. Driscoll: If your Honor please, I will ask to have marked for identification a document produced by the defendants under Paragraph 1, Item 35, being a dealer agreement TBA dated October, 1946, between the Standard Oil and Gilbert Olson; and a sublease dated April 1, 1945, Standard Oil as lessor, Gilbert Olson as lessee.

The Clerk: This will be 75 for identification.

By Mr. Driscoll:

Q. What kind of a service station does Mr. Olson operate with respect to brand name of petroleum products?

A. Mr. Olson seems to have a standard Chevron station in which he sells gasoline and tires and accessories.

Q. When did you last call on Mr. Olson?

A. I called on Mr. Olson in approximately six weeks ago.

Q. And did you offer him the products of the Dunlop Tire & Rubber Company?

A. I did.

Q. What products, particularly, if any?

A. Mainly, I was interested in selling him Dunlop [fol. 1106] tires.

Q. And were you successful in selling him the tires?

A. No; I was not.

Q. Did you have a conversation with him at the time you called?

A. Yes; I did.

Q. Where did that take place and who was present?

A. Mr. Olson was present and it took place in his station.

Q. Will you just relate the conversation and who said what as between you?

A. Mr. Olson told me—

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. Mr. Olson told me that he was familiar with the Dunlop as being an old company and that he liked the looks of our tire, but due to the fact that he would have to more or less handle it under the counter, he could not stock them in the station; he did not feel justified in doing business with them at that time.

Q. Have you called on a station at 2333 East 4th Street in Los Angeles?

A. I have.

Q. Operated by Avakian and Dworkin?

A. I have.

[fol. 1107] Q. What kind of a service station do they operate?

A. They have a new type of building, I believe recently erected by the Chevron, or by Standard Oil Company, on the corner of 4th and Soto.

Mr. Driscoll: The Government will ask to have marked for identification the documents produced by the Standard Oil under Paragraph 4, Item 37, being a dealer agreement TBA dated November 15, 1945, between the Standard Oil Company and Lawrence Avakian and Harry A. Dworkin.

The Clerk: Government's 76 for identification.

By Mr. Driscoll:

Q. When did you first call on this firm?

A. I first called on Avakin and Dworkin in March of 1945.

Q. And at that time do you recall what petroleum products they were handling?

A. They were handling Chevron petroleum products.

Q. Did you solicit their business?

A. Yes; I did.

Q. Were you successful in selling them any of your

A. I sold them a few tires during the year of 1945. I don't recall that particular time.

Q. Do you recall, Mr. Chamberlin, who you contacted, who you sold?

[fol. 1108] A. Yes. I sold Mr. Dworkin.

Q. And has all of your dealing been with Mr. Dworkin?

A. Mainly with Mr. Dworkin, as he apparently has charge of the purchasing at the station.

Q. I see. And subsequent to that call in 1945 did you call again?

A. Yes.

Q. And solicit business?

A. Yes. I called approximately every thirty days from that time on.

Q. And did you meet with some continued success in selling them?

A. Yes. Of course, at that time there was a tire shortage and the sales did not amount to too much, but we sold tires to Avakian and Dworkin and a few batteries through a few months of that year of 1945, and '46, and a little in '47.

Q. Do you recall how much in dollar volume you finally built that account up to?

A. During the year of 1946 we sold them approximately $264.00 of merchandise; during the year of 1947, about $163.00; and in 1948 nothing.

Q. What portion of the year of 1947 did you sell him, or did you sell him through all of the year?

A. The sales in 1947 were during the first part of the [fol. 1109] year.

Q. Approximately what date is the date on which you made your last sale to Mr. Dworkin?

A. I called on Mr. Dworkin not more than three weeks ago. Oh, my last sale?

Q. Yes.

A. I would say, roughly, in March of 1947.

Q. And your next call on him?

A. I called on him about every thirty days from that time on.

Q. At the time that you called on him—I understood you to say he discontinued buying from you in '47?

A. Yes.

Q. Did you have a conversation with him?

A. Yes. Along about the time in March, 1946, Mr. Dworkin—.

Q. Well, now, where did that conversation take place and who was present?

A. Mr. Dworkin was present and the conversation took place in the station building.

Q. Will you relate to the court what was said by him and by you in this conversation?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. Mr. Dworkin told me that the Standard Oil Company [fol. 1110] was planning to erect a new building for them and that if he continued to buy our product he was afraid that it would jeopardize the new building. So he said that he wanted to delay temporarily any further purchases. And since that time he has purchased nothing from us.

By Mr. Driscoll:

Q. Does a part of your territory, Mr. Chamberlin, include West Los Angeles?

A. Yes; it does.

Q. Are you acquainted with a man by the name of Brillhart?

A. Yes; I am.

Q. What business is he in and where is he located?

A. Mr. Brillhart has a Chevron station and tire shop located on the corner of Santa Monica and Bundy in West Los Angeles.

Mr. Driscoll: The Government will ask to have marked for identification the documents produced by the defendants under Paragraph 1, Item 36, consisting of a lease dated April 3, 1947, and a sublease of the same date between the Standard Oil Company and H. L. Brillhart, together with a dealer agreement TBA dated April 3, 1947.

The Clerk: That is Government's 77 marked for identification.

By Mr. Driscoll:

Q. When did you first call on Mr. Brillhart?

[fol. 1111] A. I first called on Mr. Brillhart in March of 1945.

Q. What petroleum products and accessories was Mr. Brillhart handling at that time?

A. Mr. Brillhart was carrying Hancock gasoline and several oils, including Ring Free. He also carried Kelly tires.

Q. Did you attempt to sell him your Dunlop products?

A. Yes; I did.

Q. Specifically, what products?

A. Tires.

Q. And were you successful?

A. Not at that particular call.

Q. Did you subsequently call upon him?

A. Yes; I called on Mr. Brillhart about every thirty days thereafter.

Q. And did you at any time sell him; and if so, when?

A. Yes; I first sold him in June of 1945.

Q. Was he still at that time handling the products of Hancock?

A. Yes.

Q. When is the last time that you have sold Mr. Brillhart any tires or other items of merchandise that you sell?

A. I sold Mr. Brillhart a small order approximately six weeks ago of, I believe, half a dozen tubes.

[fol. 1112] Q. Now, between the time that you first sold Mr. Brillhart and the last time that you sold him your tires could you state to the court what volume of business you had established with them?

[fol. 1113] A. During the remainder of the year, of the year 1945, we sold Mr. Brillhart approximately $260 worth of tires and tubes and batteries; we sold him $3300 worth in 1946; $1200 in 1947, and $85 so far in 1948.

The Court: $85?

The Witness: $85.

By Mr. Driscoll:

Q. Now, the sales in March of 1947 were for what period of that year, or, were they over the entire year?

A. The total amount of $1200 was approximately in January and February. There was six hundred and some dollars in January, and five hundred and some in February, which would come close to the total amount for the year.

Q. I see. During the balance of 1947 you sold him nothing more?

A. Practically nothing more.

Q. At the time his volume dropped off, did you call on him?

A. Yes, I have continued to call on him regularly.

Q. About when was that?

A. My last call?

Q. Your call in 1947, at the time that you have testified his volume dropped.

A. That was sometime in April.

Q. And did you have any conversation with him at that [fol. 1114] time?

A. Yes. Mr. Brillhart told me—

Q. Just a moment.

A. Yes, I did.

Q. Mr. Chamberlin, we will lay this foundation first. Who was present, and where did it take place?

A. It took place in the station building with Mr. Brillhart.

Q. Now, if you will just relate to the court what was said by Mr. Brillhart and by you in this conversation?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

The Witness: Mr. Brillhart stated that he was taking on the distribution of Chevron or the sale of Chevron gasoline and petroleum products, and that the Standard Oil Company preferred that he did not have any identification on the tire shop. But he said due to the fact that the tire shop was a separate unit he could continue to display other advertising than Atlas or Standard Oil products. Therefore, we were unable to—or, he was unable to display our products in the station building, and only in the tire shop.

By Mr. Driscoll:

Q. Where is the tire shop located in reference, geographically or physically, to the service station?

A. The tire shop is located in the rear of the lot, [fol. 1115] on the side street.

Q. Now, at any time in your contact and sale of Dunlop tires and batteries, and the conversations to which your have testified relative to your products with service station operators, have they expressed any dissatisfaction?

A. No, they haven't.

Mr. Driscoll: That will be all, your Honor. You may examine, Mr. Hall.

Cross examination.

By Mr. Hall:

Q. Do any of your customers ever express dissatisfaction with the products that you sell?

A. Only in isolated cases, such as may happen to any product.

Q. In very rare cases?

A. Very rarely. We have dealers that have never had an adjustment on a tire.

Mr. Hall: That is all. Thank you.

The Court: All right. Step down.

Mr. Driscoll: The government moves the admission of Exhibits marked for identification as Nos. 75, 76 and 77.

Mr. Hall: We object to each and all of the documents so offered on the ground they are irrelevant and immaterial.

The Court: The objections are overruled. The documents will be admitted.

[fol. 1116] The Clerk: 75, 76 and 77 in evidence.

Mr. Driscoll: The government calls A. H. Shafer.

The Court: Unless he comes from a great distance and you want to get him out of the way, I suggest we wait with him until morning. This has been a long day for us all, and much longer for me. I have gotten one reporter sick now, and I don't want to get another one. So unless it is somebody who comes from a distance—

Mr. Driscoll: He does not, your Honor.

The Court: How is that?

Mr. Driscoll: He does not come from a distance.

I would like, however, at this time to have marked for identification the documents produced by Mr. Hall at the government's request with respect to the Snow Machinery Company at Roosevelt, Utah. The request is related to the testimony at page 632 of the transcript and the documents are those connected with the Snow Machinery Company which the witness Smith on page 615 of the transcript testified to.

The Court: All right. They may be marked.

The Clerk: Government's Exhibit 78, for identification.

Mr. Driscoll: After marking I would like then to move their admission.

Mr. Hall: The objection is made to each and all of the documents on the ground they are irrelevant and immaterial.

The Court: Are they of a different type or the same as [fol. 1117-1118] the others?

Mr. Driscoll: They are the TBA agreement and I believe a lease—

The Court: Of the same type as those already passed on?

Mr. Driscoll: Yes. The same as Exhibits 2 and 5.

The Court: All right. They may be received. The objection is overruled.

The Clerk: Exhibit 78 in evidence.

Mr. Driscoll: The witnesses are to return at 10:00 o'clock?

The Court: Yes. The witnesses here under subpoena and who have not been excused will return tomorrow morning at 10:00 o'clock.

(Whereupon, at 5:05 o'clock p. m., May 17th, 1948, an adjournment was taken until 10:00 o'clock a. m., Tuesday, May 18th, 1948.)

[fols. 1119-1120] In the District Court of the United States in and for the Southern District of California, Central Division.

Honorable Leon R. Yankwich, Judge Presiding

No. 6159-Y—Civil

United States of America, Plaintiff,

vs.

Standard Oil Company of California and Standard Stations, Inc., Defendants

Reporters' Transcript of Proceedings

Los Angeles, California
Tuesday, May 18, 1948

Appearances: (As heretofore noted).

[fol. 1121] Los Angeles, California
Tuesday, May 18, 1948, 10:00 a.m.

Mr. Driscoll: Call Mr. Alfred Shaffer.

ALFRED H. SHAFFER, called as a witness by plaintiff, having been first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Alfred H. Shaffer.

The Clerk: And the spelling of your last name?

The Witness: S-h-a-f-f-e-r.

The Clerk: S-h-a-f-f-e-r, right?

The Witness: Yes, sir.

Direct examination

By Mr. Driscoll:

Q. Where is your residence, Mr. Shaffer?

A. 4000 Hubert Avenue, Los Angeles.

Q. And your business or occupation?

A. Manager, Frank W. Dillon Organization, 2525 South Grand Avenue, Los Angeles.

Q. And what is the business of Frank W. Dillon Organization?

A. Manufacturers of storage batteries.

Q. Where is their factory located?

A. 2525 South Grand Avenue, Los Angeles.

Q. Into what area geographically, Mr. Shaffer, does the [fol. 1122] Frank W. Dillon Company distribute the batteries that they manufacture?

A. California, Arizona, New Mexico, Nevada, Utah, and export.

Q. Do you have a brand name?

A. Yes; "Federal."

Q. Will you please, Mr. Shaffer, inform the court what type of sales organization you have, first; and then, in what manner you solicit orders for your business, how the orders are delivered in response to orders?

A. We employ salesmen that travel in various sections in the states mentioned, and they take the orders, they are turned in to the factory, shipment is made by common carrier to the customer.

Q. How many salesmen do you have?

A. Six.

Q. And how are they distributed with respect to territory?

A. Well, we have one man that travels everything outside of the State of California, the Arizona, New Mexico,

Nevada, and Utah area, and five men operating in California.

Q. To what class of trade or type of retail outlets or outlets for resale do your salesmen contact and solicit business?

A. We sell direct to parts jobbers and service [fol. 1123] stations and other retail outlets.

Q. And the orders that the salesmen will take, for example, in Utah, are shipped directly to that retail outlet by the factory?

A. They are.

Q. And so on in the balance of the territory in which you sell?

A. They are.

Q. How long have you been with the Frank W. Dillon Organization?

A. 15 years.

Q. Are you familiar with the grade and the merchandising qualities of the batteries that are sponsored and sold and distributed—sponsored by the Standard Oil Company of California and sold and distributed to their service station outlets under the Atlas brand name?

Mr. Hall: Just a moment. I object, if the court please, on the grounds that this is irrelevant, incompetent and immaterial, and not within the pleadings.

Under the complaint the only pleading of any competitors of Standard who are prepared to and who have attempted to sell their respective parts, but are not permitted to do so, is found in paragraph 26. Now, under that paragraph this is confined to "Numerous manufacturers and producers of petroleum products and automotive ac- [fol. 1124] cessories located in states outside the Western area."

This witness has shown that his business is located within the Western area; that his manufacturing plant is located in Los Angeles. Thus there is no pleading in this case that Standard contracts prevented any of Standard's competitors located within the Western area from selling their products; for there is no allegation that any such competitors located within the Western area were ever prepared to or attempted to sell their products to dealers handling Standard's products. Hence testimony that some concern located in the Western area was prepared to or

attempted to sell its products to a dealer handling Standard's products is incompetent, irrelevant and immaterial, and outside the issues framed by the pleadings upon which we have relied.

And I may say, in addition to that, that this is no new point to the Government; that in a memorandum that I handed in to the court last June in connection with motions argued at that time this specific feature of their pleading was pointed out.

26 is the only paragraph that describes these competitors who, it is alleged, were shut out, and those are competitors located outside of the Western area.

[fol. 1125] Mr. Driscoll: If the court please, one of the alleged effects of the operation of the contracts of Standard Oil which are here in question is the elements of competition between the defendants Standard and Standard Stations, Inc., and other producers and manufacturers of petroleum products and other producers and manufacturers of automotive accessories who sell and retail and distribute their products within the Western area.

Now, clearly this manufacturer and this producer of batteries is in competition with Standard of California and Standard Stations, Inc. in the distribution and sale of its products within the Western area.

Mr. Hall: Let us take paragraph 26.

The Court: Just a minute, Mr. Hall. The point that Mr. Hall is making is this, that under the allegations of paragraph 26 you lay down the limitation which he argued, because that paragraph says:

> "Numerous manufacturers and producers of petroleum products and automotive accessories located in states outside the Western Area other than those producers and manufacturers whose products are sponsored by defendant Standard, are prepared to and have attempted to sell their respective brands of petroleum products," and so forth, "to retail outlets [fol. 1126] acquired and controlled by said defendants within the Western Area. The said retail outlets, however, by reason of the obligations of their contractual," and so forth, "have not been permitted to purchase such products . . ."

In other words, his contention is that by this allegation you have limited the restraint to a flow of products outside

of the area and into the area, and did not concern yourself with the monopolistic effects so far as dealers residing within the area are concerned.

Mr. Driscoll: That would be true, your Honor, insofar as the manufacture and the production of these accessories and their flow into commerce from outside of the Western Area is concerned in competition, and into the Western Area, in competition with the defendants, but in paragraph 34(b), as one of the alleged effects of the contracts, the competition, there is no reference to the source of the sponsor of the products in competition with Standard-sponsored products, "eliminating the competition between manufacturers and producers of defendants Standard's and Standard Stations, Inc.'s sponsored products and other manufacturers and producers of products of like utility and quality . . . in the Western Area."

We do not rely in this testimony upon paragraph 26 as being a producer and manufacturer outside of the Western [fol. 1127] Area shipping in commerce into the Western Area, but here is a local manufacturer and producer who is in competition with the sponsored products of Standard Oil and is being limited by the contracts.

Mr. Dixon: I might add this, your Honor: It is obvious in this——

The Court: Just a minute. I will allow you this time to do it——

Mr. Dixon: Pardon me.

The Court: —but I don't like more than one counsel on each side to argue a minor point. When it comes to a concluding argument it is different, if you divide your time, although yesterday you noticed the difficulty a judge has when he allows two counsel to argue on the same side and one happens to be a lady, so that you cannot contradict her with the same equanimity as you can a man. But on these matters I think it will be well to limit you one to a side.

Mr. Hall: May I add to my objection?

The Court: Yes.

Mr. Hall: For a long time in this case we were doubtful as to what the competition was that we were supposed to have lessened. When the government answered our interrogatories it was perfectly clear, and then for the first time learned that the competition that we were supposed to have

shut out was the competition of other manufacturers and [fol. 1128] producers, other suppliers.

Now, we then turn to the complaint and we try to find some allegation in the complaint of who those suppliers, manufacturers and producers were who were ready, willing and able to sell, who wanted to compete, who tried to compete, and who because of these alleged restraints were shut out, according to the government.

The only allegation in the complaint is in paragraph 26. Nowhere else in the complaint is there any statement that any manufacturer or producer was ready and willing or tried to sell in competition with Standard Oil Company of California.

So when we look at paragraph 34 and it speaks of the effects, we naturally assume and have assumed that the producers and manufacturers referred to in paragraph 34 are the producers and manufacturers referred to in paragraph 26, and those are producers and manufacturers located outside the Western Area. As my very good friend, Mr. Cosgrove, frequently remarks, "the complaint in the case is the charter which the plaintiff must follow." And that is particularly true in a case of this character. This is no new point and no surprise to the government. They knew what we were relying upon, because we set it up in the brief filed with the court last June. We interpret the complaint in that way, and that is the only reasonable interpretation of the complaint, that we are not lessening the [fol. 1129] competition of suppliers located in the Western Area, because there is no allegation in the complaint that there were any suppliers who were trying to sell their products to our dealers and would have sold their products to our dealers but for these contracts, except the producers and manufacturers referred to in paragraph 26.

Mr. Driscoll: If your Honor please, in the first place, if there was doubt in your mind——

The Court: Just because you are standing up and because you are examining the witness does not mean you can deprive the defendant of the opening and closing argument. We can't have zigzagging here.

Mr. Driscoll: I would appreciate one further word, however, your Honor.

The Court: All right.

Mr. Driscoll: I should like to point out, in answer to the statement with respect to the surprise of the defendant,

that at the time we answered their interrogatories we listed these manufacturers. This specific manufacturer, as well as many and numerous other manufacturers manufacturing within the Western Area were listed; and this being an effects case, certainly we should be allowed the latitude of offering all of the testimony that is available as to the effect of the operation of these contracts upon all of the competition with the sponsored products of Standard Oil.

The Court: All right. Now, I will let you have the last [fol. 1130] sentence, Mr. Hall.

Mr. Hall: I think there certainly is surprise about this because while it may be true that in his answer to interrogatories counsel has listed certain suppliers in the Western Area, and I don't recall that that is the case, but if that be the case, I call the court's attention to this, that we were not furnished with these answers until the very eve of the trial.

The Court: All right. Gentlemen, if you were about to open an entirely new field I would be inclined to leave it out, but I am inclined to allow this to go in for two reasons. The first is the fundamental one which relates to procedure, and that is that this is a case in equity and it seeks a restraint upon future use of certain types of contracts; or, rather, restraint upon the use of certain conditions in certain contracts. And then because of that we have the firm rule in equity that a chancellor has the right to hear all of the evidence up to and including the time of the trial and the decision, whether set forth in the complaint or not. In other words, in equity it is not necessary to bring in supplemental complaints, which supplemental complaints recite facts which have occurred since that time, because the chancellor must decide the conditions as they existed as of the time. We have been confronted with that situation at [fol. 1131] all times. In a hearing that I had in the Northern Division in Fresno last Friday, an identical situation arose. I was supposed to hear an application for a preliminary injunction in a rent case. However, realizing that the issues could be determined upon a hearing upon the merits, I induced counsel to agree that that hearing of mine should be a hearing upon the merits, so that I would be spared the additional time or another judge would be spared the additional time of hearing the same matter over again and making two sets of findings. They agreed

to that, and the situation was that the giving of a notice to tenants, which the government wanted to stop, was withdrawn. That was done subsequent to the filing of the complaint and was induced by the filing of the complaint. So I heard the matter on its merits, and I suggested that if counsel do that I would allow them time to file an answer pleading that particular occurrence, although it was not necessary.

So we have here the identical situation where, granting the full scope of the contention made, the court within reasonable limits, and not abusing its discretion has the power to allow matters which are not pleaded, but which, although occurring subsequent to the time, bear upon the matter and allow them to be testified to.

There is one other point, and that is prompted by the language of Mr. Justice Rutledge in the case of Mandeville Island Farms, Inc. v. American Crystal Sugar Company, [fol. 1132] decided on May 10, 1948, which arose from this District. Judge Rutledge mentions the fact, although decisions in some of the earlier cases are to the contrary, upon which great reliance was placed at the time, that whether a restraint or monopoly resulted it must be determined by a consideration of all of the facts relating to the matter, whether they are intrastate or interstate, in order to see whether they are a part of what the German psychology calls the Gestalt. There is no English word to express it exactly, but the best would be configuration—the configuration of the entire thing.

I will read this paragraph. You are probably both familiar with the opinion, which at the present time exists in what we call the official slip decisions, and I quote from page 13, where it is stated, "In view of this evolution."—it speaks of the evolution of the concept, the more recent concept, which abandoned that rigid distinction between intrastate and interstate activity, and the doctrine of stoppage, and the like, and which this opinion repudiates. Commencing with the quotation again:

> "In view of this evolution, the inquiry whether the restraint occurs in one phase or another, interstate or intrastate, of the total economic process is now merely a preliminary step, except for those situations in which [fol. 1133] no aspect of or substantial effect upon interstate commerce can be found in the sum of the facts

presented. For, given a restraint of the type forbidden by the Act, though arising in the course of intrastate or local activities, and a showing of actual or threatened effect upon interstate commerce, the vital question becomes whether the effect is sufficiently substantial and adverse to Congress' paramount policy declared in the Act's terms to constitute a forbidden consequence. If so, the restraint must fall, and the injuries it inflicts upon others become remediable under the Act's prescribed methods, including the treble-damage provision.

"The Shreveport doctrine did not contemplate that restraints or burdens become or remain immune merely because they take place as events prior to the point in time when interstate commerce begins. Exactly the contrary is comprehended, for it is the effect upon that commerce, not the moment when its cause arises, which the doctrine was fashioned to reach.

"Obviously therefore the criteria"——

Well, that is not necessary. Then in the footnote he refers to that group of cases, the Industrial Association case, the [fol. 1134] Morrin case, the Local 167 case, and the like, and United States v. Hutcheson, in which the court distinguished between strictly local activities and the like, and the case of United States v. Frankfort Distilleries, 324 U. S. 293, in which the principle of those cases is reasserted.

[fol. 1135] Now the point that occurs to me is this: Granting that these were not pleaded specifically, they are clearly within the issue, although they may be local in character, because local practices, if they result in monopolizing the trade, may have an effect on the volume of the commerce which flows into the state.

As a matter of fact the labor union cases are clear illustrations of purely local activities which may affect the flow of commerce. In the case I decided many years ago, the Heating case, involving the agreement between contractors and labor unions not to work on equipment used in the installation of heating systems, I held—and, incidentally, the ruling decided the controversy, because, while the opinion I wrote at the time—I do not have it in front of me but it is easily obtained—as soon as I decided that it was a violation of the law the case ended on the pleadings.

But in that case the sole alleged restraint was an agreement to work only on certain products, and I held that the allegations of the indictment in that case were sufficient to show that although the agreement be local, its effect would be on stopping the flow of materials from the outside or lessening it because of the agreement not to work upon it.

That same principle was approved by the Supreme Court in what is known as the Lumber Products case. [fol. 1136] That was the case tried in San Francisco. That is not the title of the case in the high court. That case involved the agreement between the lumber workers and the lumber industry to work only on certain types of products. And the Circuit Court of Appeals, in an opinion written by Justice Denman, held that that Agreement was in effect a boycott on outside products and was within the limitation of the Statute. The case was reversed upon an instruction, but in the opinion itself the court reaffirmed the principle which really goes back to the Stone Cutters' case, way back 25 or 30 years ago, where the courts held that a refusal to work by stone cutters on certain products which originate outside the state, and where it was intended after the product was finished to return it into interstate commerce, was an interference and could be made a subject of injunctive relief against the union and a suit for damages.

I have taken more time than might seem necessary to explain this because I wanted to indicate that I do not intend to open up the flood gates, as it were, and allow matters which are not needed to come in, but to limit to the extent of showing in transactions such as these, I am willing to adopt a liberal attitude for the reasons I have indicated.

Mr. Hall: I did not want there to be any misunderstand- [fol. 1137] ing, your Honor, about our position. I was not raising an interstate commerce point here. It was purely a pleading point and a point showing prejudice to the defendants. If the Government should now change its course as mapped out by the pleadings, and say to us, not only not only were competitors located outside the Western area shut out but competitors located within the Western area shut out. In reply to that we say to the Government: You haven't said anything about competitors within the Western area. You haven't said that there were any within the

Western area and, therefore, there is no proof to be offered with respect to competitors located within the Western area.

Now, I do not want to reargue the matter, but your Honor's reference to the Crystal Sugar case indicated that your Honor may have gained a misapprehension as to the purport of my point. It is simply that we are prejudiced now at this late stage by having the Government come in and say: "Oh, not only are the competitors outside the Western area that we are talking about, but we are claiming that there were competitors within the Western area."

The Court: All right. I think I have expressed my view fully. If you come to a question of pleading, I think the litigants in an action are chargeable with knowledge that the court in any equity case, may consider facts showing the conditions as they exist at the present time, [fol. 1138] whether they are pleaded or not.

Furthermore, I believe that as to local restraint evidence is not only permissible but flows from the very nature of the transaction, because if we assume that these agreements had the effect of restricting interstate commerce and restricting competition in the particular product, then of necessity that effect would apply also to competitors within the state; and if a monopolistic practice has that effect, then the mere fact that the restraint alleged expresses itself by curtailment of local activities does not matter; because, as this last case teaches and all the others teach, if it is a restraint of interstate commerce, then the monopoly may be rendered more unreasonable, to use the word referable to the Sherman Anti-Trust Law, by a showing that it closes the door to inquiry, whether they are local or whether they are on the outside; and if that is true, then we can receive testimony as to the effect of the practices.

Mr. Hall: Well, I have stated my position, your Honor.

The Court: So we have all stated it.

Mr. Hall: It is a serious point with me and may I, for the purpose of the record, designate the objection that I have made as "Standard Oil's objection No. 1," because it will save space in the record when I urge the same objection hereafter if that may be the term to so designate [fol. 1139] it?

The Court: That is all right. I have no objection to that being done.

All right, I will overrule the objection.

Now, Mr. Bargion, have you got the question?

The Reporter: Yes; I have it, your Honor.

The Court: All right, will you read it?

(Pending question read by the reporter, as follows:

"Q. Are you familiar with the grade and the merchandising qualities of the batteries that are sponored and sold and distributed—sponsored by the Standard Oil Company of California and sold and distributed to their service station outlets under the Atlas brand name?")

The Court: All right, you may answer.

A. I am.

Mr. Driscoll: I am sorry. What was the answer, Mr. Reporter?

The Witness: "I am." "I am."

Q. Is the battery that is manufactured and distributed by the Frank W. Dillon Organization under the Federal brand name comparable to and competitive with the Atlas brand sponsored and distributed and sold by Standard Oil Company?

A. It is.

Q. Do you distribute and sell your batteries to any [fol. 1140] jobber accounts within the area?

A. We do.

Q. Where are those jobber accounts located?

A. Well, we have jobbing accounts in California; we also have them in the various states that I have already mentioned.

Q. And the batteries manufactured here by you are distributed to them in much the same manner or the same manner as the retail outlets to which you testified?

A. The same manner as the retail outlets.

Q. Do you know, Mr. Shaffer, if any of the service station trade that you have testified your salesmen solicit are the stations which are operated by Chevron operators for the Standard Oil Company?

Mr. Hall: I interpose Standard Oil's objection No. 1.

The Court: Overruled.

A. We have sold some Chevron stations.

Mr. Driscoll: I think that will be all.

Cross-examination.

By Mr. Hall:

Q. In the area you have mentioned what other batteries compete with batteries beside Atlas batteries?

A. Well, Hobbs, States, National, Delco, Willard, Exide, Globe. That is about all.

Q. Is that all?

[fol. 1141] A. There may be some various ones I don't recall.

Q. And have those batteries that you have mentioned been competing with your battery for a number of years?

A. Yes, sir.

Q. To how many retail outlets did you sell your batteries in the states of California, Arizona, Nevada, and Utah during the year 1946?

A. I can give you that in percentage figures rather than dollar volume. In California, in 1946, approximately 47½ per cent were sold to service stations.

Q. What was the percentage in 1947 in California?

A. 33⅓ per cent.

Q. What number of service station outlets or garage outlets in the three states that I mentioned carried your products in 1946?

A. Without making a check of the records I couldn't give you that at this time.

Q. Well, give me approximately.

A. I would say that approximately 225 service stations are sold in the State of California.

Q. Well, I was asking you about California, Nevada, Arizona, and Utah.

A. Well, I have to break it down because my percentages are broken down in the same manner.

Q. Yes.

[fol. 1142] A. I would say in the other states that about five per cent of the business that is done in those three other states are done with service stations, the rest with jobbers.

Q. And in California your percentage to the service stations is what?

A. Our percentage of service stations in California was 47 per cent in '46—47½, and 35⅓ in '47.

Q. And that was percentage of your total business?

A. That is correct, sir.

Q. Do your jobbers sell to service stations also?

A. They do.

Q. And that would be true for the states you mentioned outside of California?

A. That is correct.

Q. Do you have jobbers in California?

A. We do.

Q. And those jobbers would sell to service stations?

A. Also, yes, sir.

Q. So that in giving me your percentages of the production handled directly through jobbers you were not attempting to give me a percentage as to the retail outlets handling your product, were you?

A. No. All I was giving you was the direct sales made by our own organization to service stations.

Q. Do you sell your batteries in Washington and Oregon?

[fol. 1143] A. We do not.

Q. Do you sell them in Idaho?

A. We have. However, we do not travel a man that distance at the present time.

Q. How long has your company been selling batteries in the states of California, Arizona, Nevada, and Utah?

A. Since 1932.

Q. Did it sell in any of those states before 1932?

A. I cannot answer that. I did not work for the company prior to that time. However, the company has been in business since 1921, I believe.

Q. Have you any records showing how many retail outlets your jobbers sell to?

A. No; I have not.

Q. In the various states?

A. No; no figures available.

Q. But you do have direct sales other than sales to jobbers, is that right?

A. That is correct.

Q. You could give us those figures as to the number of outlets?

A. I could; yes, sir.

Q. Now, taking the overall number of outlets, not only service stations but all other types of trade, considering your direct sales not to jobbers, how many outlets did you [fol. 1144] sell to in the year 1946 in the states of California, Arizona, Nevada, and Utah?

A. I would have to check before I could answer that question.

Q. Well, give me an approximation.

A. You want—may I ask you this question?

Q. Surely; you may ask me.

A. You want the sales direct to service stations, the number of service stations that were sold direct, exclusive of jobbers, is that correct?

Q. No, no. You misunderstood me. I want to put jobbers to one side for a moment.

A. Yes.

Q. And I want to know, aside from your sales to jobbers, how many units, how many retail outlets you sold your batteries to in those states in 1946; and by retail outlets I mean all kinds of retail outlets, stations, garages, dealers, everything else you may have sold to.

A. You just said "those states." You mean the states outside of California?

Q. No; I mean California, Arizona, Nevada, and Utah.

A. Well, I would say that in that number, the total number of service stations and garages and retail outlets that we have sold, exclusive of jobbers, would probably be around 250 to 260 accounts.

[fol. 1145] Mr. Hall: That is all.

The Court: Any redirect?

Mr. Driscoll: Yes, your Honor.

Redirect examination.

By Mr. Driscoll:

Q. You have testified, Mr. Shaffer, that in 1946 your sales to service stations represented 47 per cent of your business?

A. That is correct.

Q. And in 1947 represented approximately 33 per cent?

A. That is correct.

Q. You have had, then, a drop of approximately 14 per cent in the sales to service stations?

A. That is correct.

Q. Now, you have also testified that you have sold some Chevron stations?

A. That is correct.

Q. During what period of time was that?

A. In 1946, and we have sold a few stations in 1947.

Q. Now, have the service stations, Chevron stations which you have sold in 1947, as compared to 1946, been less or more?

A. They have been less.

Q. Would a part of the 14 per cent drop in your business be attributed to the loss of those Chevron accounts?

[fol. 1146] A. Some of it.

Q. Yes. Do you have an adequate supply of batteries to meet all of your orders that your salesmen take and your merchandising requirements?

A. We do.

Q. Has the fact that you have discontinued selling in Idaho had anything to do with your manufacturing capacity?

A. Well, we have curtailed production. We have production available if sales were made.

Q. I see. As to your sales organization, sales force, are you responsible for their direction?

A. Yes.

Q. Are you expanding your efforts to acquire retail outlets?

A. We are.

Mr. Driscoll: I think that is all.

Recross examination.

By Mr. Hall:

Q. I think you said you had no records and did not know what the outlets were that your jobbers sold to, is that correct?

A. That is correct.

Mr. Hall: That is all.

Mr. Driscoll: You may be excused. Mr. Leon Gill.

[fol. 1147] LEON B. GILL, called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Leon B. Gill.
The Clerk: Leon B., and how do you spell your last name?
The Witness: G-i-l-l, Junior.

Direct examination.

By Mr. Driscoll:

Q. Where do you reside, Mr. Gill?
A. 8553 Saturn Street, Los Angeles.
Q. Are you employed?
A. Yes, sir.
Q. By whom are you employed and in what capacity?
A. I am with the Frank W. Dillon Organization, 2525 South Grand. I am a salesman.
Q. What territory do you sell for them?
A. Well, I cover the Arizona, Utah, Nevada, and sections of California.
Q. What products do you sell?
A. The Federal storage batteries.
Q. Storage batteries?
A. Yes.
Q. And under what brand name?
[fol. 1148] A. Federal.
Q. How long have you been employed by the Frank W. Dillon Company?
A. About 15 months, 14 months.
Q. Where were you employed prior to that time?
A. Well, I was employed by them prior to that time in 1942 and part of '43, and I left and joined the service.
Q. In the course of your duties as salesman have you ever called on a service station located at Wellton, Arizona called Bob's Service Station?
A. Yes.
Q. When was that?
A. That was February the 17th, this year.
Q. What kind of a service station is this? What products does it sell?
A. Well, it is a Chevron service station; it advertises Atlas tires and batteries.

Mr. Hall: May it be deemed, your Honor, that Standard Oil's objection No. 1 runs to all this testimony?

The Court: All right, it is so understood.

By Mr. Driscoll:

Q. How did you happen to call on this dealer and what occurred at the time that you called on him?

A. Well, I was driving from Yuma, going to Casa Grande, and we didn't have distribution in that particular area [fol. 1149] and it looked like a pretty good location, so I dropped in to talk to him.

Q. Had you known the operator of that station prior thereto?

A. No.

Q. Who did you ask for?

A. Well, I asked for Bob, the manager and owner.

Q. Then what happened?

A. Well, I found him, he was in the station, and I introduced myself and told him I was representing Federal storage batteries. He said——

Mr. Hall: Just a minute. I object to this as hearsay.

The Court: Overruled.

By Mr. Driscoll:

Q. When did this conversation take place, if you recall?

A. In February, this year.

Q. Was anyone there besides you and the manager Bob?

A. There were just two other people, who were not in the conversation. They were having their automobile fixed. They were tourists.

Q. Now will you relate what was said by Bob and what was done?

A. I introduced myself and told him I was representing the Federal Battery Company. I said I had an interesting program to offer him, price and quality and so [fol. 1150] forth. He said, "No doubt that you do, but I am not interested. I am tied up with the program here by Standard and my time and your time can both be saved. There is no point in giving me a sales talk."

Q. Are you acquainted with a service station called Glacier Service Station operated at Big Pine?

A. I am.

Q. Do you know who operates that station?
A. Jimmy Nikolaus.
Q. Are you acquainted with him?
A. Yes; I am.
Q. When did you first become acquainted with him?
A. In May of 1946.
Q. May of 1946?
A. Yes.
Q. And what were the circumstances of your acquaintance with him at that time?
A. Well, I was working up at Glacier Lodge at that time. That is a lodge 11 miles up the canyon from Big Pine. I had just been released from the navy and I went up in the mountains more or less as a lark. He and I became quite well acquainted at that time.
Q. Has that acquaintance extended over since then?
A. Yes, but it was mainly for three or four months there. However, we are familiar with each other and speak and [fol. 1151] so forth. We do not correspond. It is not a close relationship.
Q. What business is Mr. Nikolaus in up there did you say?
A. He is the Chevron service station dealer.
Q. After you took employment with the Frank W. Dillon Company did you ever call on Mr. Nikolaus to sell him your product?
A. Yes.
Q. About when was that, do you know?
A. It was May 5th of 1947.
Q. Were you successful of selling him some of your products at that time?
A. Yes; I was.
Q. Did you have a conversation with him at the sale?
A. Yes.
Q. Was anyone there besides you and he?
A. No, sir.
Q. And where did it take place?
A. In his service station.
Q. And what was said, if you will?
A. Well, I told him——

Mr. Hall: Objected to as hearsay.
The Court: Overruled.

A. I told Mr. Nikolaus that I was working for the Frank W. Dillon Organization and we manufactured storage [fol. 1152] batteries. He asked me, he said, "Are they good storage batteries?" I said, "They are." He said, "All right; I will order some." I mean that is the relationship between us.

Q. Did he have any other brand of batteries on hand at that time?

A. I didn't see any other brand.

Q. Was anything said by him with respect to his supply of batteries?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. That didn't enter the discussion, supply.

By Mr. Driscoll:

Q. And did you thereafter contact Mr. Nikolaus for the sale of batteries?

A. Yes. I phoned him in August of the same year.

Q. That would be 1947?

A. Yes, sir.

Q. Had you ever talked to Mr. Nikolaus over the phone previously?

A. Yes.

Q. Were those phone conversations frequent or infrequent?

A. I would say frequent.

Q. From whence did you call him?

A. I called him from Los Angeles from our factory.

Q. How did you place this phone conversation with him [fol. 1153] to him?

A. Well, I called the long distance operator and asked her for Jimmy Nikolaus Glacier Service at Big Pine, California, Inyo County.

Q. Did he answer the phone?

A. No, sir.

Q. Do you know who answered?

A. No. One of his employees there.

Q. And what did you say then?

A. I asked——

Mr. Hall: Objected to as no proper foundation laid and also hearsay.

The Court: Well, the hearsay objection will be overruled.
Mr. Driscoll: I am laying the foundation, your Honor.
The Court: You may lay a better foundation.

By Mr. Driscoll:

Q. And what did you say to this voice that answered the phone, if anything?
A. I asked to speak to Jimmy Nikolaus.
Q. And what then happened?
A. Jimmy Nikolaus came to the phone.
Q. Did you recognize his voice?
A. Oh, yes.
Q. And when was this?
A. This was in August; in fact, it was August 1st,
[fol. 1154] 1947.
Q. And did you then have a telephone conversation with Mr. Nikolaus?
A. I did.
Q. Will you please relate to the court what was said by you and what was said by him?

Mr. Hall: Objected to as hearsay.
The Court: Overruled.

A. I asked him where were some more battery orders. And he said business had been a little slow, for one thing; second, he said that he had better not order any more of my batteries; that it would be better for him to handle the batteries offered to him by the company.
Q. Did he say anything further with respect to——
A. Well, he said that the company frowned on, as he might call, off-brand merchandise in his service station.
Q. And since that time have you attempted to sell Mr. Nikolaus any batteries?
A. No. It was just left by him that if he were in a position to buy some more from me, he would.

Mr. Driscoll: All right, that is all. You may examine, Mr. Hall.

The Court: All right. Cross examine.
Mr. Hall: You may step down.
The Court: Pardon?
[fol. 1155] Mr. Hall: That is all.
The Court: We will take a short recess.

(Short recess.)

[fol. 1156] The Court: Proceed.

Mr. Thody: The government calls Mr. Robert W. Hinton.

ROBERT W. HINTON, called as a witness by the plaintiff, being first duly sworn, testified as follows:

The Clerk: Take the stand, please. What is your name, please?

The Witness: Robert W. Hinton.

The Clerk: The last name?

The Witness: H-i-n-t-o-n, Hinton.

Direct examination.

By Mr. Thody:

Q. Where do you reside, Mr. Hinton?

A. 162 West Elm Drive, Phoenix, Arizona.

Mr. Hall: What was the name of the place?

The Witness: Phoenix, Arizona.

By Mr. Thody:

Q. Have you been employed by the Denton Tire Company in Phoenix, Arizona?

A. I have.

Q. During what periods were you employed by this company?

A. July 15, 1947 through March 15, 1948.

Q. In what capacity did you serve with the Denton Tire Company?

A. Wholesale salesman.

[fol. 1157] Q. Do you know what business the Denton Tire Company is engaged in in the city of Phoenix?

A. They are wholesale tire, battery and auto accessory TBA line distributors.

Q. Do you know what brands of such merchandise they sell?

A. I do.

Q. What are they?

A. They handle the Gillette line of tires, Exide batteries, the Hollingshead and Whiz line of chemicals.

Q. Do you know in what area, sales area, the Denton Tire Company markets its products?

A. They market in what is commonly called there as the Phoenix area.

Q. What would the Phoenix area comprise?

A. Oh, everything north of Florence and west of Tucson, I would say. It is the valley, Salt River Valley, taking in Mesa, Tempe, Phoenix, Globe, Superior, and so forth, and so on.

Mr. Hall: Will you speak a little louder, please, Mr. Hinton?

By Mr. Thody:

Q. Would you approximate what radius in miles that would cover, outside of the city of Phoenix?

A. It covers in the neighborhood of 750 miles, if you make the complete loop.

[fol. 1158] Q. What was the nature of your duties as salesman with the Denton Tire Company?

A. Calling on garages, service stations, and outlets for retail distribution.

Q. Did you spend all of your time in this type of work?

A. Yes.

Q. Approximately how many calls a day did you make to such accounts?

A. Approximately ten.

Q. How did you visit these accounts?

A. By car.

Q. Did you call on Chevron stations?

A. Yes.

Q. Did you call upon the station located at Indian School Road and North Central Avenue, in Phoenix, Arizona?

A. I did.

Mr. Thody: The government wishes, your Honor, to have marked as a Government's exhibit for identification the distributor agreement with Standard Oil Company of California and Rudy Glenn, dated June 10, 1941, which was produced in response to Government's subpoena No. 1, paragraph 1, No. 59.

The Clerk: Government's Exhibit 79, marked for identification.

By Mr. Thody:

[fol. 1159] Q. Approximately when did you call on this station?

A. August, 1947.

Q. What was the purpose of your call?

A. To solicit the dealer account for the products which I was handling.

Q. Did they include all the products you have described?

A. Tires, tubes, batteries, and accessories.

Q. Did you make any sales to this station at that time?

A. No.

Q. Did you have any conversation with anybody concerning the reasons you didn't sell?

A. Yes.

Q. To whom did you talk?

A. Rudy Glenn himself.

Q. And who is Rudy Glenn?

A. The operator of the station.

Q. When did those conversations take place?

A. During business hours of that period, near early August, 1947.

Q. Where were those conversations held?

A. At the establishment.

Q. And what was said at that time?

Mr. Hall: Objected to as hearsay.

[fol. 1160] The Court: Overruled.

The Witness: I beg your pardon?

The Court: You may answer.

By Mr. Thody:

Q. You may answer.

A. Well, it was pointed out that although our lines were satisfactory and first-grade, that it was against the principles of the terms of his business agreement to handle other than Atlas products.

Q. Who stated that?

A. Mr. Glenn.

Q. Have you ever called upon the station located at Central Avenue and Mohave Streets in Phoenix, Arizona?

A. Yes.

Q. When did you call upon such station?

A. During the same period, August and September, 1947.

Q. Over what period of time?

A. I made weekly calls, made weekly visits around the area.

Q. Did you sell any merchandise?

A. During the early period to that particular locality, yes.

Q. When you say "the early period," what period of time do you mean?

A. For the summer months of 1947.

Q. What products did you sell?

[fol. 1161] A. Tires and tubes.

Q. Approximately how many did you sell?

A. I should say in the neighborhood of 8 to 10 over a two-months period perhaps.

Q. Did you sell him any products after September, 1947?

A. No, sir.

Q. Did you ever have any discussions with anybody concerning the difference in volume of the sales you previously made and the fact that you did not sell afterward?

A. Yes, sir.

Q. With whom did you have such discussion?

A. One of the partners of the organization named Frank Von Gelder.

Mr. Hall: I didn't get the name.

The Witness: Frank Von Gelder.

Mr. Hall: Spell it, please.

The Witness: I believe it is capital V-o-n capital G-e-l-d-e-r, I believe that is right.

By Mr. Thody:

Q. Now, is or is not Mr. Von Gelder the person that you had previously sold your merchandise to?

A. He is.

Q. When did these conversations take place, that you have described?

A. In the late summer months, September, leading up into October, perhaps.

[fol. 1162] Q. Where did they take place?

A. At the station at Mohave and Central.

Q. What was the nature of the conversations? What was said by you and him?

A. We had been able to do some business during the early

part there due to shortages, I would presume, but after

Q. We don't care what you presume, Mr. Hinton.

A. I am sorry.

Q. What was said?

Mr. Hall: Objected to as hearsay.

The Court: Proceed.

The Witness: Pardon?

The Court: Overruled.

The Witness: Mr. Von Gelder explained that his source of supply through Atlas had suddenly been increased and it would be impossible for him to do any further business with us in that line.

By Mr. Thody:

Q. Did you see any Atlas tires at his place of business when you first made your original sales?

A. Some.

Q. Did you see Atlas tires at his place of business when you first made your original sales?

A. Some.

Q. Did you see Atlas tires at his place of business [fol. 1163] in September, at the time the conversation took place which you have enumerated?

A. In large quantities.

Q. In large quantities. Were the quantities larger in September than they were in June?

A. They were.

Q. At any time was any dissatisfaction expressed to you concerning the merchandise you had previously sold?

A. None whatsoever.

Mr. Thody: The government moves at this time, your Honor, that Government's Exhibit No. 79, for identification, be admitted into evidence.

Mr. Hall: We object to each and all of the documents so offered on the ground they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: 79 admitted into evidence.

Mr. Thody: I ask that the dealer agreement T.B.A. dated September 11, 1946, with Standard Oil Company of California and Francis J. Woods, which was produced in response to subpoena No. 1, paragraph 1, Item No. 61, be marked for identification.

The Clerk: Government's Exhibit 80, for identification.

Mr. Thody: Have you ever sold or attempted to sell your products to a station located at Van Buren Avenue and 36th Avenue in Phoenix, Arizona?

[fol. 1164] A. Yes, sir.

Q. When did you make such solicitation?

A. I believe it was February, 1948.

Mr. Thody: The government at this time, your Honor, wishes to have marked for identification the dealer's agreement TBA, dated January 22, 1947, between Standard Oil Company and Lawrence Wetzel; to be marked as a Government's exhibit, for identification.

The Clerk: Government's Exhibit 81, for identification.

By Mr. Thody:

Q. Whom did you visit at this time at that station?

A. Mr. Wetzel.

Q. Do you recall his name, his full name?

A. Well, he is more or less known just as Larry.

Q. When was it you called upon him?

A. In February, 1948.

Q. What products did you attempt to sell him?

A. Our complete TBA line.

Q. Were you successful or unsuccessful?

A. Unsuccessful.

Q. Were any reasons given to you as to your being unsuccessful in making this sale?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

The Witness: It was stated——

[fol. 1165] By Mr. Thody:

Q. Answer "Yes" or "No."

A. No, sir—or, I am sorry.

Q. Were or were not any reasons given to you for your inability?

A. Reasons were given.

Q. Did you have any conversations concerning these reasons?

A. A short one.

Q. And that was when?

A. At that same time?
Q. And who was present?
A. Myself and Mr. Wetzel.
Q. And what was said?

Mr. Hall: Objected to as hearsay.
The Court: Overruled.
The Witness: It was stated that it would be against business, better business judgment as far as he was concerned to make any endeavor to deviate from his Atlas TBA.

By Mr. Thody:

Q. Were any further discussions had with him at that time?
A. No, sir.
Q. Did you notice any products other than Atlas sold at that station at that particular time?
A. No, sir.
Q. Have you visited the station located at 7th Avenue [fol. 1166] and Heatherbrae in Phoenix at any time?
A. Yes, sir.
Q. When have you visited this station?
A. The latter part of 1947 through February, 1948.
Q. Approximately how many times have you visited the station?
A. Perhaps a dozen.
Q. Was that with the purpose in mind of selling your products?
A. Soliciting business.
Q. And have you ever sold them any products?
A. I recapped two tires for them.
Q. Would you describe the circumstances concerning the selling of these tires?
A. Oh, I had made——

Mr. Hall: Objected to as irrelevant and immaterial, and no proper foundation laid.
The Court: You had better lay the foundation.

By Mr. Thody:

Q. When was it you sold these two recapped tires?
A. In February of '48.
Q. How was this sale initiated?
A. The operator placed a call to our establishment and requested that we pick up two tires for recap.

Q. Did you follow through on this order?

[fol. 1167] A. I did.

Q. Did you visit the station?

A. I did.

Q. And when did you visit it?

A. In February.

Q. Have you ever sold any other merchandise to this station?

A. No, sir.

Q. To whom did you talk at the station?

A. I believe his name is John Lentner and——

Mr. Hall: I couldn't hear the name.

The Witness: —John Hogue.

Mr. Hall: Will you read that last, please?

(The answer referred to was read.)

By Mr. Thody:

Q. Have you ever tried or endeavored to sell him your line of merchandise, your new merchandise?

A. I have.

Q. Upon what occasions?

A. On numerous visits after the station was opened, which to the best of my knowledge right now is the latter part of 1947, through the time we have just mentioned.

Q. Well, have you been successful or unsuccessful?

A. Unsuccessful.

Q. —in selling your new merchandise?

[fol. 1168] A. Unsuccessful.

Q. Have you ever had any conversations with Mr. Lentner concerning your inability to sell new merchandise?

A. I have.

Q. When did such conversations take place?

A. During the aforementioned period.

Q. Do you recall any specific time?

A. As I said, I made weekly calls to all of my stations and endeavored each time to solicit business.

Q. Well, at any of those times were there any reasons given to you why you were unsuccessful?

Mr. Hall: Just a minute. Objected to as no proper foundation laid, irrelevant and immaterial. It hasn't been shown who this station belonged to or that it was a Chevron station.

The Court: I think you had better lay a better foundation.

By Mr. Thody:

Q. What brand of gasoline was sold at this station?

A. Chevron.

Q. Were any products advertised?

A. Atlas products.

Q. Where were these products advertised?

A. On banners and through standards, tires placed in there for display.

[fol. 1169] Q. What were such advertisements,—what products?

A. Atlas tires and tubes.

Q. When was your conversation that you referred to?

A. I would say in February of 1948.

Q. Approximately when in February?

A. The early part.

Q. Were any other persons present other than you and Mr. Lentner?

A. Well, it was a partnership there of Lentner and Hogue, and the three of us were in the discussion.

Q. And what was said?

Mr. Hall: Objected to as no proper foundation laid, irrelevant and immaterial, and hearsay.

The Court: I think he has laid the foundation as best he can. Overruled.

By Mr. Thody:

Q. What was said?

A. That it was not feasible for them to handle our merchandise, as they had a contract with their petroleum supplier which covered the TBA fully.

Q. Now, on these products that you were selling for the Denton Tire Company at this time, do you know where shipments were received from for Gillette tires?

A. Los Angeles.

Q. Were orders placed from Los Angeles, do you know?

A. By the Denton Tire Company. Then we carried a full [fol. 1170] line of merchandise for distribution in our area.

Q. And from where were shipments of batteries received, if you know?

A. Electric Storage Battery, here in Los Angeles.

Mr. Thody: The government moves at this time, your Honor, to have Government's Exhibit No. 80, for identification, admitted in evidence.

Mr. Hall: Each and all of the documents offered are objected to on the ground they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: Exhibit 80 in evidence.

Mr. Thody: Likewise, your Honor, the government moves that Government's Exhibit 81, for identification, be admitted into evidence.

Mr. Hall: Each and all of the documents so offered are objected to on the ground they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: 81 in evidence.

[fol. 1171] Mr. Somerville: You may examine the witness.

Cross examination.

By Mr. Hall:

Q. I believe you said your area was, roughly speaking, the Salt River Valley of Arizona?

A. Well, sir, in servicing Arizona for redistribution it is more or less divided into two areas, one serviced from Tucson, which goes down through Bisbee, Nogales, and so forth, and one from Phoenix, which covers the area toward Wickenburg or Highland and back down to Phoenix.

Q. What I wanted to get at was what was your sales area?

A. Mine was the immediate Salt River Valley.

Q. And you canvassed that area between July, 1947 and March, 1948, is that correct?

A. I did, sir.

Q. During that period how many separate retail outlets did you solicit?

A. Approximately 125 to 130.

Q. And how many did you sell?

A. Sir?

Q. How many did you sell?

A. I had about 80 active accounts.

Q. Then there were about 45 people that you visited that you did not sell, is that correct?

A. I would say so.

[fol. 1172] Q. Is that right?

A. Yes, sir.

Q. Did any of those people complain about the products you were offering?

A. I had no complaints.

Q. I beg pardon?

A. No complaints.

Q. No complaints from any of those 45 people?

A. No.

Q. Well, what reasons did they give you for not buying the products that you offered?

A. Some through choice handled other items.

Q. They gave you various reasons, did they?

A. Various reasons.

Q. What were some of them?

A. Well, some of them prefer the U. S. Royal tire to our Gillette or a Goodyear tire to our Gillette or a Firestone tire to our Gillette.

Q. Any other reasons you can think of?

A. Not offhand, sir.

Mr. Hall: That is all.

The Court: Any redirect?

Redirect examination.

By Mr. Somerville:

Q. After the year or the months of January and Feb- [fol. 1173] ruary, 1948 did you customarily call upon Chevron stations?

A. No, sir.

Q. When you first started in July, 1947, did you customarily call upon Chevron stations?

A. Yes, sir.

Q. And approximately when did you discontinue.

A. When it was proven to my own satisfaction that I could not make any sales at that particular stop. There were new ones going up all the time and each time one would go up I would make a call.

Mr. Somerville: That is all.

The Court: All right. Anything further?

Mr. Hall: Just a minute.

Recross examination.

By Mr. Hall:

Q. Did you during the eight or nine months that you have covered that territory call on all service stations in the territory?

A. As many as physically possible.

Q. Well, I am asking you did you call on all of them?

A. Yes, sir.

Q. In other words, you covered every single service station in the Salt River Valley?

A. Oh, numerically. No, sir; I am afraid I couldn't say that.

[fol. 1174] Mr. Hall: That is all.

The Court: Gentlemen, we will recess the case until 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p.m., of the same day, Tuesday, May 18, 1948.)

[fol. 1175]

Los Angeles, California,
Tuesday, May 18, 1948. 2:00 p.m.

The Court: You may proceed, gentlemen.

Mr. Somerville: The government calls Irvin Stimpson as the next witness.

Irvin G. Stimpson, called as a witness by the plaintiff, being first duly sworn, testified as follows:

Direct examination.

The Clerk: Take the stand, please. What is your name, please?

The Witness: Irvin G. Stimpson.

The Clerk: How do you spell your first name?

The Witness: I-r-v-i-n.

The Clerk: And the middle initial is?

The Witness: G.

The Clerk: And the last name?

The Witness: Stimpson, S-t-i-m-p-s-o-n.

By Mr. Somerville:

Q. What is your residence address, Mr. Stimpson?

A. R.F.D. 4, Ogden, Utah.

Q. Would you speak a little louder, please? By whom are you employed?

A. The Town Supply Company.

[fol. 1176] Mr. Hall: Just a moment. Can you speak louder? What was the name, please?

The Witness: Town Supply Company.

By Mr. Somerville:

Q. What is the business of the Town Supply Company?

A. Automotive jobbers and wholesalers.

Q. What are your duties there? What is your capacity with this company?

A. I am a salesman.

Q. What area do you cover as a salesman?

A. I travel northern Utah and southern Idaho.

Q. What products are handled by Town Supply Company that would be sold to service station operators for resale to the motoring public?

A. We sell Autolite batteries, Raybestos fan belts, radiator hose.

Q. Do you know from what source your company receives Autolite batteries?

A. Yes, they receive them through the Autolite company from Oakland, California.

Q. Where does the Raybestos line come from?

A. It comes from Bridgeport, Connecticut.

Q. And does your company handle spark plugs?

A. Yes, sir, A.C. spark plugs and oil filters.

Q. And oil filters?

[fol. 1177] A. Yes, sir.

Q. Where do those come from?

A. That is from the A.C. Company at Flint, Michigan.

Q. Did your company handle various types of chemical polishes and waxes that are used by the automobile trade?

A. Yes, they handle the Inland line.

Q. From what source are they received?

A. That is received from the Inland Company in Missouri—from Minnesota.

Q. In what area does the Town Supply Company distribute these products to the trade?

A. From what area, you mean?

Q. In what area are they doing business, selling to the trade?

A. Utah, Idaho, Nevada, Wyoming.

Q. Are you familiar with how many salesmen the Town Supply Company has?

A. Yes, twelve.

Q. Are some of those salesmen assigned to selling territory in Nevada and Idaho?

A. Yes.

Q. What trade do you call on?

A. I call on service stations, garages, car dealers.

Q. Do you call on the Chevron station trade?

A. Some, yes.

[fol. 1178] Q. Have you called on a service station located at Main and Second South Street at Brigham City, Utah, operated by Mark Brightenburg?

A. Yes.

Q. When did you first call on this station?

A. About September, 1947.

Q. Did you attempt to sell your line of accessories at that time?

A. Yes.

Q. Were you successful or unsuccessful?

A. Well, not right at that time. I have sold him supplies that he couldn't get from Standard Oil Company.

Q. What were some of those supplies, do you recall?

A. Well, tire chains, polishing mitts.

Q. Did you thereafter continue to call on Mr. Brightenburg?

A. Yes.

Q. How often?

A. Well, I make the trip every week, and most generally I stop and see him each week.

Q. Were you successful in making additional sales?

A. Only on those items that I have told you before.

Q. As a salesman did your technique involve an attempt to get Mr. Brightenburg to stock your accessories as a regular thing?

[fol. 1179] Mr. Hall: That is objected to as calling for a conclusion of the witness' speculation and conjecture.

Mr. Somerville: I am asking what his technique was.

Mr. Hall: There is no proper foundation laid showi he had any technique.

The Court: He can state how he proceeded, to descri how he did things. Objection sustained.

[fol. 1180] By Mr. Somerville:

Q. Was anything ever said to you during any of the calls respecting the matter of carrying these items stock?

A. Well, not the ones that I was able to sell him, but told me——

Mr. Hall: Now, just a minute. I object to any conversa tions with the dealer on the ground that it is hearsay.

The Court: Overruled.

Mr. Somerville: The question was: Was anything sai yes or no?

A. Objections to handling the product that I was sellin him? I don't quite get the question.

Mr. Somerville: Will the reporter read that questio back?

(Question read by the reporter.)

Q. I believe you started to qualify it by saying it did n involve the items you did sell but something was said wit respect to other items; was that correct?

A. That is right. The items that——

Q. When were any conversations held with respect t items that you could not sell but desired to sell?

A. Well, at the times when I called on him.

Q. Approximately when would those be, at the beginnin of your calls?

A. Oh, yes. I would name over my lines and the on [fol. 1181] that he could handle and wanted, he woul buy it.

Q. Was anyone present other than Mr. Brightenburg i on any of these discussions?

A. No.

Q. And these conversations would occur at his servic station?

A. Yes.

Q. And what were those conversations?

A. Well, I asked him about his batteries, fanbelts and like that, and he says: Well, he bought those from the company.

Mr. Somerville: The Government asks that dealer agreement TBA dated December 10, 1947, between Standard Oil Company of California and Mark F. Brightenburg, produced under subpoena No. 2, paragraph 1, No. 49, be marked for identification.

The Clerk: Government's 82 for identification.

By Mr. Somerville:

Q. Were you unsuccessful thereafter in having your items stocked?

A. No. He would stock my tire chains, but those other items, no; I was not able to sell those.

Q. With respect to the items that he did stock were Atlas competitive items also present in the station?

A. Yes.

Q. But you were never able to sell him items such as oil filters, fanbelts, spark plugs?

[fol. 1182] A. No.

Q. Have you ever called upon a service station operated by Hugh C. Nielsen at the northeast corner of the intersection of Second South and State Streets in Preston, Idaho?

A. Yes.

Mr. Somerville: The Government asks that dealer agreement TBA dated September 3, 1947, between Standard Oil Company of California and Hugh C. Nielsen, and an assignment of this dealer agreement to Ariel A. Biggs, effective as of March 1, 1948, be marked for identification.

The Court: Government's Exhibit 83 for identification.

By Mr. Somerville:

Q. When did you first call on Mr. Nielsen?

A. Mr. Nielsen was about September, the end of '47, November or somewhere in there.

Q. And were you successful or unsuccessful with respect to selling him?

A. I was able to sell him some spotlights and fog lights.

Q. Was there any change in the personnel operating this station on any later calls?

A. Ariel A. Biggs.

Q. When?

A. Took over in approximately March 1st of this year.

Q. Did you attempt to sell your products to Mr. Biggs? [fol. 1183] A. Yes.

Q. Did he purchase any from you?

A. Only spotlights and fog lights, as I have stated before. I asked him on batteries and he told me that——

Mr. Hall: Just a minute. Object to what he told the witness on the ground that it is hearsay.

The Court: Overruled.

By Mr. Somerville:

Q. By the way, when did you have any conversation with Mr. Biggs concerning stocking your items?

A. About a month ago.

Q. Where did such conversations occur?

A. In his place of business.

Q. And who were present?

A. Just Mr. Biggs.

Q. And what was said?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

A. I asked him about stocking a line of batteries and he said that he was unable to do that; he had to buy them from Standard Oil. I asked him also about his fanbelts and he said he—I mentioned that he had Gates fanbelts, and he said, "Well, I have to get rid of those as soon as possible."

Q. Did he have any competitive tires at the time?

A. He had two which they had complained about him [fol. 1184] handling.

Q. Did he say that they had complained about them?

A. Yes.

Q. Were you successful or unsuccessful in selling him your fanbelts, your oil filters, your spark plugs, your waxes and polishes?

A. I was unsuccessful, because he said that they had told him that—give him the understanding when he went in there that he bought from them or they had someone else that would.

Mr. Somerville: That will be all.

Mr. Hall: Just a minute, sir.

Mr. Somerville: There is cross examination.

Cross examination.

By Mr. Hall:

Q. How long have you been covering that north Utah and south Idaho territory?

A. A year, a year ago last September.

Q. Then you have been covering it about a year and a half approximately?

A. Yes, sir; approximately.

Q. During that year and a half how many separate and distinct retail outlets did you call upon and solicit?

A. I have approximately 125 accounts throughout that territory.

[fol. 1185] Q. Now, please listen to my question, because that is not what I asked you.

A. Oh.

Q. I asked you how many retail outlets you solicited for business during that year and a half whether you sold them or not.

A. Well, that is what I say; I have about 125 accounts. They are all retail accounts.

Q. Do you sell to all those 125?

A. Yes, sir.

Q. Do you ever call on anybody you don't sell to?

A. Well, occasionally. I don't sell always when I call there but I do, maybe, every other trip or——

Q. Now, let me put it this way: Are there any outlets that you have called upon in that territory at any time that you didn't sell something to?

A. You mean of all the time that I have been calling? I don't believe so.

Q. Were there any outlets that you called upon during that year and a half period that did not buy all of the things that you offered to sell them?

A. Oh, yes; there were some that I didn't sell everything that I had.

Q. How many of those were there?

A. Well, I don't know that.

[fol. 1186] Q. If I get you correctly, you don't knock out

100 per cent on every trip, on every visit that you make covering your entire line, do you?

A. No, sir.

Q. Which means that some of these people that you call upon refuse to buy certain commodities from you, don't they?

A. They don't refuse; no, sir. They just don't need it at the time.

Q. Well, they don't buy from you, do they?

A. At times. If they need it, they do.

Q. What reason do they give for not buying from you at the times they don't buy?

A. Well, they just don't need it; their stock is complete.

Q. Do you run what in trade is called a "pie wagon"?

A. No, sir.

Q. You don't carry around things that you actually sell?

A. No, sir.

Q. It is all upon order, is it?

A. Yes, sir.

Q. Now, I want to get this perfectly clear, and you correct me now if I am wrong. Do I understand that the only occasions upon which an outlet does not buy things that [fol. 1187] you offer to the outlet is when such outlet has those things in stock which it has already purchased through you?

A. Well, that is right to a certain extent. We have contracts, that is, on different lines which another jobber may have the same contract and able to fill in. He handles our lines in that respect and if he is down, he buys from me. [fol. 1188] Q. Well, now, let me give you an illustration. There are various makes of fan belts on the market, aren't there?

A. Yes, sir.

Q. Competing in your territory, aren't there?

A. Yes, sir.

Q. Now, does every outlet that you have visited during that year and a half stock your particular brand of fan belts?

A. Oh, no, sir, not——

Q. In other words, those outlets buy fan belts from somebody else?

A. That's right, sir.

Q. And when they have stocked fan belts which they

bought from somebody else, they don't buy your fan belts; isn't that right?

A. That's right.

Q. The same thing might be said of the radiator hose, and batteries, and spark plugs, and other miscellaneous items, might it not?

A. Ordinarily on radiator hose, spark plugs and oil filter elements, and such, they handle several lines of each, and we sell those.

Q. How about the waxes and polishes?

A. Well, that's true with that, too.

Q. They handle several lines?

A. That's right, sir.

[fol. 1189] Q. So that *is it* your testimony that everyone you call upon in that area, whether they handle some competing line, they at least handle your line of spark plugs and oil filters and waxes and polishes?

A. The majority of them do.

Q. Well, now, there are some that don't, aren't there?

A. Well, in order to tell you for sure on that, I would have to take you there and show you, or take an inventory on it.

Q. Couldn't you give it from recollection?

A. Well, they may handle the oil filters and they may not handle the spark plugs, like that, but I still sell them on that line.

Q. What makes of batteries compete with your batteries in the area that you have referred to?

A. We have—there is the Willard, Exide, Hobbs, Fluor, and the U. S., Goodrich, and your Atlas.

Q. That is in addition to your brand? What is your brand?

A. Autolite.

Q. The what?

A. The Autolite.

Q. The Autolite. Now, is it customary in that area for a substation to handle more than one brand of batteries?

A. No, sir.

[fol. 1190] Mr. Hall: That is all.

Redirect examination.

By Mr. Somerville:

Q. Mr. Stimpson, I would like to make this perfectly clear, also. You testified that you sell to 125 accounts. Are there additional stations that you merely call on maybe one time and then let go and never re-call on?

A. Oh, yes. Well, I have approximately 125 accounts that I do contact, some every week and some of them maybe every other week, but there are other stations that I have called on, or other places of business that I have called on, that I haven't gone back because I haven't been able to sell them.

Q. Have you ever called upon a Chevron station a single time and never gone back?

A. No, not a single time. I have called on them two or three times and then have quit.

Q. Now, with respect to the 125 accounts that you have mentioned, that would include the two that you have testified to on your direct examination, would it not?

A. Yes.

Q. Now, with respect to the items that you sell, you are not able to sell your full line to each one, are you?

A. That's true.

Q. And you were not able to sell your full line to either [fol. 1191] one of the dealers whom you testified to?

A. That's right.

Q. Were you able to sell either of those dealers batteries?

A. No, sir.

Q. Were you able to sell either of those dealers fan belts?

A. No, sir.

Q. Were you able to sell either of those dealers oil filters?

A. No.

Q. Were you able to sell either of those dealers spark plugs?

A. No.

Q. You were able to sell those dealers tire chains?

A. The one I sold tire chains to.

Q. Do you know whether or not competitive tire chains

were available, bearing the Atlas brand or obtained through Standard Oil Company?

A. I don't know that.

Q. Did I understand your testimony on direct to be that there were competitive Atlas chains in stock at the time you sold these?

A. No.

Q. Now, have you been able to increase the number of [fol. 1192] Chevron accounts that you sell to?

A. No.

Mr. Somerville: That is all.

Recross examination.

By Mr. Hall:

Q. Now, I am not talking about the 125 accounts which you have called upon, and I am not talking about Chevron stations. My question is this: Leaving those out of account, did you call upon any stations or dealers or retail outlets one or two times in an endeavor to make a sale and then give in on it?

A. Yes, sir.

Mr. Hall: That is all.

Mr. Somerville: The Government at this time offers in evidence Government's Exhibit 82, for identification, and Government's Exhibit 83, for identification.

Mr. Hall: The defendants object to each and all of the documents so offered on the ground they are irrelevant and immaterial.

Mr. Somerville: You may be excused, Mr. Stimpson.

The Court: The objection will be overruled. They may be received.

The Clerk: 82 and 83 in evidence.

Mr. Somerville: The government calls as the next wit- [fol. 1193] ness E. E. Stevens.

Elmo E. Stevens, called as a witness by the plaintiff, being first duly sworn, testified as follows:

The Clerk: Take the stand, please, sir. What is your name, please?

The Witness: E. E. Stevens.

The Clerk: How do you spell your last name?
The Witness: S-t-e-v-e-n-s.
The Clerk: What is your first name?
The Witness: Elmo, E-l-m-o.

Direct examination.

By Mr. Somerville:

Q. Where do you reside, Mr. Stevens?
A. Salt Lake City.
Q. By whom are you employed?
A. Well, I am self-employed.
Q. What is your business?
A. We are a distributor for Pennsylvania tires and tubes.
Q. Does your business have a name?
A. Yes, Penn Tire Service, 872 South State.
Q. How long have you been associated with this company?
A. Two years.
[fol. 1194] Q. Are you a franchise distributor for Pennsylvania Rubber Company?
A. Yes, sir.
Q. Does that include tires, tubes and batteries?
A. Yes, sir.
Q. From what source did you receive tires and tubes?
A. Well, we received partial shipments from the Los Angeles warehouse, and also some drop shipments, and car, partial car shipments from Jeannette, Pennsylvania.
Q. From the Pennsylvania Rubber Company?
A. Yes.
Q. From what stock did you receive batteries?
A. We received them from the Los Angeles warehouse of the Pennsylvania Rubber Company directed to the Paint & Piston Service Company. They are the warehouse distributor for the Pennsylvania batteries in Salt Lake.
Q. What is the area of your distribution for these products?
A. We have Salt Lake County and west on Highway 40 to Wendover, Utah.
Q. As the distributor of the Pennsylvania tires and tubes and batteries, do you receive any direct assistance from factory representatives or company representatives of the Pennsylvania Rubber Company?

A. Yes, promotional. They have a promotional man in the [fol. 1195] territory at all times.

Q. Who is the Pennsylvania Rubber Company man that assists you?

A. Robert L. Ripley.

Q. And what type of assistance does he give you?

A. He aids us in our advertising promotional work; also aids our salesmen in their calls daily, not going with them every day, but periodically he goes with them.

Q. Would he on some occasions call on service station operators, for example?

A. Oh, yes.

Q. In company with your salesmen?

A. Right.

Q. What class of trade does your company endeavor to sell?

A. We solicit service stations, and fleet operators, and industrial accounts.

Q. Calling your attention, Mr. Stevens, to the service station located in Knolls, Utah, operated by Harry Naylor, have you ever called on this station?

A. Yes, sir.

Mr. Somerville: The government asks that a lease dated June 2, 1941 between Mrs. H. L. Haylor and Woody Naylor, her son, and Standard Oil Company, lessee; a sublease dated June 2, 1941 between Standard Oil Company of Cali- [fol. 1196] fornia and Mrs. H. L. Naylor and Woody Naylor; a contract dated July 25, 1946, a dealer agreement TBA dated July 25, 1945 between Standard Oil Company of California and Mrs. H. L. Naylor and Woody Naylor; a letter from W. G. Watson, Attorney-in-fact, to Mrs. H. L. Naylor and Woody Naylor dated January 20, 1943; and an assignment of certain contracts dated or effective as of March 1, 1947 be marked for identification. These were produced under subpoena No. 2, paragraph 1, item 47.

The Clerk: Government's Exhibit 84, for identification.

By Mr. Somerville

Q. Have you ever sold any tires to this station?

A. Yes, sir.

Q. When did you commence these sales?

A. Oh, around the middle of April, 1947.

Q. Were additional sales made after that time?

A. Oh, yes, weekly.

Q. Describe the circumstances which led to your first making sales to Mr. Naylor?

A. We had several accounts in Wendover we were doing recapping for. We were also selling used tires, and we deemed it advisable to start a route to Wendover, servicing all of the accounts that were on Highway 40, particularly service stations. Our salesman, Mr. Frank C. Williamson, who was employed by us, made the first call and on his daily [fol. 1197] report on his return remarked that this man——

Mr. Hall: Just a minute. Not what was shown in the report. That is objected to as not the best evidence.

By Mr. Somerville

Q. Your Mr. Williamson suggested to you that an effort be made to sell——

A. Prior to opening——

Mr. Hall: Just a minute.

The Court: That is leading and suggestive. Furthermore, he can't testify to that. He can tell what was done.

Mr. Somerville: Very well.

By Mr. Somerville

Q. Did you thereafter personally call on Mr. Naylor with respect to selling him tires and tubes?

A. Yes, sir.

Q. When did you first call on him yourself?

A. Around the 1st of June, 1947.

Q. And were you successful or unsuccessful?

A. Successful.

Q. And did you make additional calls?

A. Yes, every week thereafter.

Q. Did you make sales every week?

A. Yes; sometimes twice a week.

Q. At the time you first called on Mr. Naylor personally did you consider this an unusual account?

A. Yes.

[fol. 1198] Mr. Hall: Just a minute. I move to strike the answer. I didn't have an opportunity to object.

The Court: All right. It may be stricken.

Mr. Hall: I object on the ground it is leading and suggestive and calls for a conclusion of the witness, speculation and conjecture.

Mr. Somerville: Let me rephrase it.

The Court: All right.

By Mr. Somerville

Q. Let me ask you, was there anything unusual about this account?

Mr. Hall: That calls for a conclusion.

The Court: That calls for a conclusion, yes. He can describe it.

By Mr. Somerville

Q. Did you have any conversations upon your first visit with Mr. Naylor with respect to his handling Pennsylvania tires and tubes?

A. Yes.

Q. Where did this occur?

A. At Knolls, Utah, at his service station.

Q. And this would be in June, would it?

A. Yes, my first visit there was in June.

Q. And who were present at the time?

A. Well, just Mr. Naylor and myself at that time.

Q. What was the nature of the conversations?

Mr. Hall: Objected to as hearsay.

[fol. 1199] The Court: Overruled.

The Witness: I asked Mr. Naylor if it was not possible to sell him additional items, and received an order for a radiator cleanser, and fan belts and, well, quite numerous items of accessories relative to the automotive supplies.

By Mr. Somerville

Q. Did you at that time ask him if he was receiving supplies of Atlas tires and tubes and batteries?

A. Yes, because I was inquisitive, because prior to that time I was associated——

Mr. Hall: Just a minute. That is the witness' conclusion. He has answered the question and I move to strike out all of his answer after word "Yes."

The Court: The motion will be granted He can give his

estimation later, after he has answered the question, but you should not theorize.

Mr. Somerville: Would you read the question and answer, please.

(The question and answer were read.)

The Court: That will be stricken. All except the answer "Yes."

Q. By Mr. Somerville: Where is this station located, Mr. Stevens?

A. It is at Knolls, Utah, on the desert, 24 miles east of Wendover.

[fol. 1200] Q. How far is that from Salt Lake City?

A. About 100 miles.

Q. Is Salt Lake City the only city of any size there?

A. Yes.

Q. Is that located on a U. S. Highway?

A. Yes, U. S. 40.

Q. Is that highway heavily or sparsely traveled?

A. Very heavily traveled.

Q. Did Mr. Naylor on the occasion of your first visit place any orders for fan belts and miscellaneous accessory items?

A. Yes, he did.

Q. Were Pennsylvania tires and tubes prominently displayed in his station?

A. Yes.

Q. Did you sometimes receive telephone orders from Mr. Naylor during this period?

A. Yes, sir.

Q. How would these be shipped?

A. We would place them on the bus, the Union Pacific bus, and they would drop them off at his station.

Q. How long did your sales to Mr. Naylor continue?

A. Until the end of July, 1947.

Q. You first commenced them in May,——

A. It was April.

[fol. 1201] Q. —1947, and ended in July, around July 31, 1947?

A. Yes.

Q. And how many tires in dollar volume did you sell Mr. Naylor during this period?

A. Oh, I would say about $1300 worth.

Q. Did any conversations occur prior to the last sale with respect to the handling of Pennsylvania products?

A. Yes.

Q. About when did that occur?

A. The middle of July.

Q. Where?

A. At his station.

Q. And who were present?

A. There was myself and his wife and himself in the soft drink parlor.

Q. What was the nature of the conversation?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

The Witness: I asked for an order in the future, if he could give me an idea about what size tires and in what quantity he would want me to deliver in the next week, and he said he didn't know for sure, because he didn't know how long he could handle our tires. He said that pressure was being brought to bear, and he didn't know for sure whether he could handle our tires in the future.

[fol. 1202] By Mr. Somerville:

Q. At that time did he take some tires from you?

Q. Do you take tires with you on one of these trips——

A. Yes, I had a truck.

Q. —if there is a sale made, and do you call that a "pie wagon"?

A. That's right.

Q. Were there any further conversations held with respect to Mr. Naylor handling Pennsylvania tires and tubes and other products?

A. Not until we terminated at the end of July.

Q. Were these conversations also held at the service station?

A. Yes, in his service station.

Q. At the end of July?

A. Yes.

Q. Would that be on your last trip there?

A. That's right.

Q. And who were present at these conversations?

A. Mr. Naylor and I were at the truck at the time.

Q. And what was said?

A. He said he would not be able to handle our tires any longer, and that he appreciated what I had done, and said he was sorry he couldn't give me some more business.

[fol. 1203] Q. Did he give you any further reason for his refusal?

A. Well, yes; he said that there was certain pressure being brought to bear by Standard Oil Company, that he could not handle our tires in their station.

Q. By the way, where did you unload these tires?

A. I unloaded them in the service station.

Q. In the service station?

A. Yes; up to the last shipment. The last shipment was placed in the back room.

Q. I was referring to the last shipment. They were placed in the back room?

A. Yes; in the back room.

Q. There was a change, then, in the manner in which Pennsylvania tires were displayed, is that true?

A. That is right.

Mr. Somerville: The Government offers into evidence Government Exhibit 84 for identification.

Mr. Hall: Each and all of the documents so offered are objected to as irrelevant and immaterial.

The Court: Overruled.

The Clerk: 84 in evidence.

Mr. Somerville: At this time I would like to call attention to dealer agreement TBA dated July 25, 1945, and the term of this contract, which runs from August 1, 1945 to March 31, 1972.

[fol. 1204] Q. By the way, does the weather get pretty hot out there at Wendover?

A. Very warm.

Q. And the stretch of highway over which the tourists will travel is long or short?

A. It is a long drive.

Q. Calling your attention to a service station operated by George Duffin at 11th East and 9th South Street, Salt Lake City, Utah——

11th East and 9th South?

Mr. Hall: What was that name, again, counsel?

Mr. Somerville: George Duffin.

Mr. Hall: Thank you.

By Mr. Somerville:

Q. When did you first call on Mr. Duffin?

A. Well, at the outset, when they bought the tire shop and we done all his recapping from May, 1946 on.

Q. Did you sell him any new tires?

A. Yes, occasionally.

Q. Did Duffin stock these tires at his station?

A. No.

Q. Describe how he would buy them.

A. Well, he would come down in his own car and put them in the back end of his car and take them away from our place.

Q. Did he buy a number at one time?

A. No; one or two at the most.

[folio 1205] Q. Were any conversations held concerning stocking these tires in his station?

A. Well, yes; we would like him to stock the tires, but under his agreement he said that he could not stock them in his service station.

Mr. Somerville: I think that will be all. Oh, just a minute. The Government would like marked for identification a letter to Standard Oil Company of California signed by Bernice Duffin, which appears to appoint George Duffin as operator of this service station at 1085 East 9th Street South. This document was produced under subpoena No. 2, paragraph I, item No. 48. As part of the same exhibit I would like a document produced in response to request for documents under Rule 34. It appears to be a memorandum concerning a $7,000 loan to Bernice Duffin.

The Clerk: Government's 85 marked for identification.

Mr. Somerville: You may cross examine, Mr. Hall.

Cross examination.

By Mr. Hall:

Q. Did you ever sell any merchandise to Standard Oil Company of California?

A. No.

Q. Did the company you represent ever do so?

A. Not to my knowledge.

Q. You have been soliciting the trade for two years, [fol. 1206] I think you said?

A. Right.

Q. And that was in this area in Utah adjacent to Salt Lake City?

A. In Salt Lake, Salt Lake County, and adjacent to it.

Q. How many separate retail outlets did you call on, whether you sold them or not, during that two-year period?

A. Oh, I would say possibly a hundred.

Q. Just a hundred separate ones during the whole two-year period?

A. Retail accounts.

Q. Retail accounts?

A. That is right.

Q. How many did you sell out of that hundred?

A. Oh, of course, we must realize that during that 1946 you could sell tires to anyone. They were very short and critical, and we did not sell but to two outlets other than our dealers during the critical shortage.

Mr. Hall: Would you read the answer, please, Mr. Reporter?

(Answer read by the reporter.)

Mr. Hall: Your answer leaves me a little mystified.

The Court: He started merely to give the reasons, but you did not give the answer.

A: The reasons for that were: My being familiar with [fol. 1207] the setup, I knew that I had to cultivate customers for the future, therefore, I wanted to give the tires to people that would patronize me after the shortage was over.

By Mr. Hall:

Q. Now, I am getting at how many people you called on during that period, whether you sold them or not.

A. Well, retailers, I didn't call on them.

Q. Oh, you didn't?

A. During 1946.

Q. I see. Well, let us get down to 1947, then. How many retailers did you call on then, whether you sold them or not?

A. Well, I would say approximately a hundred.

Q. Tires were not so short in 1947, were they?

A. No.

Q. Did you sell tires to all of those hundred?

A. Oh, no.

Q. How many did you sell out of the hundred?

A. Well, about 30 per cent.

Q. So that 70 per cent of the hundred turned you down for one reason or another?

A. Right.

Q. What were some of those reasons?

A. They were not able to buy from us.

Q. Well, those 70 outlets were not all Chevron stations, were they?

[fol. 1208] A. No.

Q. Were they stations that handled the petroleum products of some other company?

A. Yes; Standard Oil of Indiana, also Texaco stations handling Firestone.

Q. Any others that you can think of?

A. Not that I recall, only, naturally, the Chevron stations, they are the same as Standard Oil of California. We were excluded there.

Q. After you were unsuccessful in selling this Mr. Naylor at Knolls, Utah did you ever go back there?

A. Oh, yes.

Q. Now, let's see. When was the first time you were unsuccessful in selling him?

A. Well, I was back later on, but the last time——

Q. Wait a minute, wait a minute.

A. —I was there for that express purpose——

Mr. Hall: You are not answering my question.

A. —was July 1st, 1947.

Q. That was the last time you sold him?

A. That is right.

Q. How often after that did you go back?

A. I didn't go back.

Q. So you don't know what he was handling in the way of tires after that time?

[fol. 1209] A. No.

Q. After George Duffin failed to buy tires from you did you go back and see him again?

A. Yes.

Q. Let's see, now. When was it you said he would not buy any tires from you?

A. Well, that went on until he was out of the station, until he gave up the lease.

Q. Wait a minute, wait a minute. Please listen to my question. When was the last time that he refused to buy tires from you?

A. I would say it would be in about February, 1947.

Q. How many times after February, 1947 did you call on him?

A. Oh, at least once a week.

Q. For how long a period?

A. I don't remember how long it was.

Q. When was the last time you called on him?

A. I am not sure of the date, either, on that.

Q. What was it he told you in February, 1947?

A. Well, he could not stock the tires.

Q. Then why did you keep on calling upon him week after week?

A. Because we were doing his recapping for him and his section work.

[fol. 1210] Q. On any of those occasions when you called on him then after February, 1947 it was with reference to recapping and you did not try to get him to buy any tires, is that right?

A. Well, naturally, you would try.

Q. I beg pardon?

A. Naturally, I would try.

Q. You would keep on trying?

A. Certainly.

Q. Did he have a stock of Atlas tires?

A. He did.

Q. How large a stock?

A. Well, comparatively large; yes.

Q. I am speaking now of the period after February, 1947.

A. Comparatively large for a service station.

Mr. Hall: That is all.

The Court: Any redirect?

Mr. Somerville: Yes.

Redirect examination.

By Mr. Somerville:

Q. In July, on July 31, 1947, at the time that you last delivered tires to Stephens (Duffin) did Mr. Stephens express any dissatisfaction with Pennsylvania tires and tubes?

Mr. Hall: Will you pardon me a minute, counsel? Did you [fol. 1211] say "Stephens"?

Mr. Somerville: Oh, I am sorry. I said "Stephens." I meant Naylor.

A. No; he didn't express any dissatisfaction whatsoever.

Q. Did he ever express dissatisfaction?

A. No.

Q. Have you seen or talked to ~~Mr. Naylor since~~?

A. Yes; I talked to him. I have sent his laundry out to him a number of times since then.

Q. That is all you have delivered, then, is laundry?

A. Just put it on the bus for him; yes.

Q. No accessories along with it?

A. No.

Q. At the time you last called at this station did you notice whether any Atlas tires and tubes were on hand?

A. Yes; he had a few Atlas tires and batteries and tubes there.

Q. Had he had any Atlas tires and tubes prior to this time?

A. No; he was not able to get them.

Mr. Somerville: I think that will be all, Mr. Hall.

Recross-examination.

By Mr. Hall:

Q. Did you ever have a person that you solicited to buy [fol. 1212] tires tell you that he didn't like the product you were offering him?

A. Certainly.

Q. Is that a matter of frequent occurrence?

A. I think everyone—yes.

Q. You say it is a frequent occurrence?

A. Not with me; with any product.

Q. No; I don't want your speculation as to anybody else. I want your experience. Is it a frequent occurrence with you?

A. No.

Q. It isn't?

A. It is a well accepted item.

Q. How many such criticisms would you say occurred in the given year in your experience; and I mean by that

criticisms made to you of the product you are offering in the way of tires?

A. Probably 12 or 14.

Q. 12 or 14 times. Do those criticisms come from any particular type of dealer or retail outlet?

A. No; not one specific type.

Q. What do they criticize in your tire?

A. Sometimes they criticize our adjustment policy.

Q. What else do they criticize?

A. The tread design that they have.

Q. What else?

[fol. 1213] A. That is about it.

Q. And you get about 12 of those a year, you say?

A. Yes, sir.

Q. And that would be in the year 1947 12 out of a hundred people would make those criticisms?

A. Certainly.

Mr. Hall: That is all.

Redirect examination.

By Mr. Somerville:

Q. Do I understand you to say that 12 out of every hundred people you contact make these complaints?

A. Yes; the users and service stations and so forth, general.

Q. Had you ever received any complaint of this character from Mr. Naylor?

A. No.

Q. Had you ever received any complaints of this character from Mr. Duffin?

A. No.

Mr. Somerville: That is all.

Mr. Hall: That is all.

The Court: When you say that it is accepted policy do you mean that you accept it as a part of the chance in doing business? Is that it?

The Witness: That is right. It has sufficient advertising and background, but it is an accepted product with the [fol. 1214] motoring public.

The Court: No; that is not the point. You misunderstood me. I thought I heard you say that a certain percentage of complaints is accepted.

The Witness: Yes.
The Court: As going with the product.
The Witness: Yes.
The Court: Did I understand you correctly?
The Witness: That is right.
The Court: I am asking you if you accept that?
The Witness: That is right.
The Court: In other words, you figure that is one of the risks in doing business that there would be people that would complain about the product?
The Witness: Yes.
The Court: All right.
Mr. Somerville: I would like to ask an additional question.
The Court: All right.

By Mr. Somerville:

Q. Does your company make adjustments on tires?
A. Yes.
Q. Would that be with respect to somebody who had made one of the complaints that you have enumerated?
A. Oh, yes.
[fol. 1215] Q. And have they thereafter continued to buy Pennsylvania tires?
A. Yes.

Mr. Somerville: That is all.
The Court: All right, who is your next witness?
Mr. Somerville: The Government will call Paul Ferrari.

Paul S. Ferrari, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Paul S. Ferrari.
The Clerk: Paul S., and how do you spell your last name?
The Witness: F-e-r-r-a-r-i.

Direct examination.

By Mr. Somerville:

The Government offers into evidence Government Exhibit 85 for identification.

Mr. Hall: The defendants object to each and all of the documents so offered on the ground that they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: That is 85 in evidence.

By Mr. Somerville:

Q. What is your residence address, Mr. Ferrari?

A. 408 East 8th Street, Reno, Nevada.

[fol. 1216] Mr. Hall: I could not hear the last word.

The Court: Reno, Nevada.

By Mr. Somerville:

Q. And what is your employment or occupation?

A. I am a partner in an automotive supply business.

Q. What is the name of that?

A. Rissone's.

Q. And what is the business of that company?

A. We are jobbers and distributors for automotive supplies and accessories, and we also have a large recapping plant.

Q. What are some of these products that your company handles?

A. We are distributors for Fisk tires and tubes and batteries and accessories, and Thermoid products, Willard products, Hollingshead products.

Q. And from what source do you receive your Fisk tires?

A. We receive them from several sources. Some come from the coast warehouses, some come direct from the factories, Los Angeles, some come direct from the factory at Chicopee Falls, Massachusetts.

Q. Do you handle Fisk batteries as well?

A. Yes; they have a line of batteries also.

Q. Do they come from the same sources?

A. They come from the warehouse in San Francisco and [fol. 1217] also from the battery company that makes the battery for Fisk.

Q. And where do you receive shipments of Thermoid products; that would be fanbelts, hose, brake linings?

A. They have a coast warehouse in San Francisco; they also come—some come out of Los Angeles; a lot of them come from Trenton, New Jersey, which is their plant.

Q. From what source do you receive oil filters?

A. We handle several lines. One is the Wix line which

comes from back east and also from the coast warehouses. We handle Purolator, which comes from the coast warehouse.

Q. Are you also distributors for any oils and greases?

A. Yes. We are distributors for Valvoline, Freedom Oil Company.

Q. From what source do you receive these products?

A. We received that from direct shipments and also from coast warehouses or other warehouses around the west coast.

Q. What class of trade do you solicit in selling your products and distributing them?

A. We sell to service stations, garages, and also other motor supply houses.

Q. What is the area of distribution covered by your company?

A. The area of distribution up there is Nevada and northern California, as a rule, with most companies.

[fol. 1218] Q. Could you approximate the percentage of business done in California?

A. Yes. I would say approximately 40 per cent.

Q. Calling your attention to a service station operated by Jerry Vidovich at Schurz, Nevada, have you ever called on this service station?

A. Yes; I have.

Q. When did you first call on Mr. Vidovich?

A. It was the latter part of last year, when he first started to open his service station.

Mr. Somerville: The Government would like marked for identification dealer agreement TBA dated November 7, 1947, between Standard Oil Company of California and Jerome S. Vidovich; and petroleum products and equipment agreement dated November 7, 1947, between Standard Oil Company of California and Jerome S. Vidovich, produced under subpoena No. 2, paragraph 1, item 57.

The Clerk: Government's Exhibit 86 marked for identification.

By Mr. Somerville:

Q. At the time of your first call last year did you make any sales of any of your products to Mr. Vidovich?

A. Yes; I took an order for some tire tools which I shipped out to him.

Q. Tire tools?

[fol. 1219] A. Tire tools.

Q. And at that time did you make any efforts to sell your resale products?

A. Yes; I did. I talked to both he and his brother.

Q. Where were these conversations, at the service station?

A. They were there at the service station and also in his brother's restaurant which is adjoining.

Q. Were any other parties present if you recall?

A. Yes; his brother's wife was present.

Q. And what were the nature of those conversations?

A. Well, he was just getting started and I, of course——

Mr. Hall: I object to this as hearsay, if the court please.

The Court: Overruled. Just strike out "he was just getting started."

A. I spoke to him about putting in the tires and batteries and doing his recapping, and spark plugs and accessories, whatever the lines we had or carry.

By Mr. Somerville:

Q. And what did he say?

A. Well, he wasn't quite sure at that time. He didn't know just what he could handle.

[fol. 1220] Q. Did you thereafter make additional calls?

A. Yes, I made a call about—either a week or two weeks after that.

Q. Did you again make an effort to sell him?

A. Yes, and he and his brother both verified the fact that they would do business with us.

Q. Thereafter did you make any further calls?

A. Our salesman makes a call there every week.

Q. And have you been successful or unsuccessful in selling him the usual retail items sold to service stations?

A. He has sold him some items; mostly items that are either odd—he has sold him tires, and has sold him plugs, but I couldn't tell you offhand just what size they were.

Q. At the time you sold him tires, have you noticed whether Atlas tires were in stock?

A. He didn't at that time have anything in stock there because they were supposed to put them in, or something, according to the contract.

Mr. Hall: I move to strike that part of the answer of the witness, they were supposed to put them in according to the contract.

The Court: Yes, that may be stricken.

By Mr. Somerville:

Q. In your conversation which you mentioned, was anything said concerning stocking Atlas products?

[fol. 1221] A. Yes, there was. He told me that Standard Oil was to give him a stock of tires and batteries.

Q. Was anything said with respect to stocking sizes of Fiske tires which may or may not have been supplied by Standard? What, if anything, was said along that line?

A. Well, he gave me to understand that he would like to handle Fiske tires and our Willard batteries and quite a few of our lines.

Q. But did he ever stock these items?

A. No, he never has.

Q. Has he ever displayed any of your items at his station?

A. No, he never has.

Q. Calling your attention now to a certain station operated at Portola, California by Orville Musser, have you ever called at that station?

A. Yes, I have.

Q. When did you first call there?

A. I first called on—well, I called on that station after I got out of service. It was sometime in 1946, and from then on.

Q. How long were you in the service?

A. I was in the service four years.

Q. Were you successful or unsuccessful upon your first contacting Mr. Musser in selling him anything?

[fol. 1222] A. I sold him—he has been buying from us right along. Our other salesman made that territory, and I used to go around every once in a while in different territories and this particular—the first time that I went back there after I got out of service, I delivered the merchandise to Mr. Musser.

Q. Did you ever sell him any tires?

A. Yes, I delivered tires to him.

Q. In any quantity at all?

A. Yes. I think it was either at that particular time—

this particular time I think I delivered either two or four tires of a certain size that he wanted.

Q. Did he thereafter make additional orders for tires?

A. Yes, he purchased tires from us right along, and batteries, and other accessories and supplies.

Q. How long did purchases of your tires continue?

A. Well, they continued right along up through 1947.

Q. Was there any change in the amount or type or sizes of tires that you sold him?

A. Well, there was a change in the quantity. There was a change in the amount we sold him, according to our records, which we have.

Q. Calling your attention to a service station or garage, operated by Bruce Mills at Portola, California, did you call on that station?

[fol. 1223] A. Yes, I did. I called on them before I went in the service. It was around—it started around in 1939, and I called on him about once a week, pretty regular.

Q. And were you successful in selling him?

A. We were successful in selling him certain items, and also our—we did his recapping.

Q. You did his recapping?

A. Yes, sir.

Q. Did you sell him any tires?

A. We never sold him any tires unless it was some size that he couldn't get, or something that he needed in an awful hurry, or something like that.

Q. Did any conversations ever occur with respect to stocking regular sizes of Fiske tires?

A. Yes, I——

Mr. Hall: Just a minute.

By Mr. Somerville:

Q. Or a complete line of Fiske tires?

A. Yes, I tried to——

Mr. Hall: Just a minute. The witness has answered.

By Mr. Somerville:

Q. Just answer that "Yes" or "No."

The Court: You can answer "Yes" or "No," to that.

The Witness: Yes.

By Mr. Somerville:

Q. When did such conversations occur?

[fol. 1224] A. It occurred numerous times.

Q. During what period?

A. Well, between 1939 and the time I went into the service.

Q. Did such conversations occur early in 1939?

A. Yes, it did.

Q. And who were present at the conversations?

A. His wife was present.

Q. And these conversations occurred at the service station?

A. Yes.

Q. What, if anything, was said with respect to stocking your items?

Mr. Hall: Objected to as hearsay.

By Mr. Somerville:

Q. —or your tires?

The Court: Overruled.

The Witness: He told me that he had to sell Atlas tires because he had a Standard Oil agreement and wasn't able to stock any other tires, and that was the only tire that he could put on a credit card, on a Standard Oil Credit Card.

By Mr. Somerville:

Q. By the way, did Mr. Musser ever express any dissatisfaction or satisfaction with your products?

A. No, not to me.

Q. In 1947 were you able to sell him a full line of [fol. 1225] Fiske tires?

A. No.

Q. Was it limited to certain sizes, or, what type did you sell him?

A. He bought pretty much all sizes, but he never had a complete stock at any one time, that I can remember of.

Q. Did any conversations occur during this year with respect to stocking your tires?

A. Yes, it did. I spoke to him about those tires.

Q. When did this conversation occur?

A. On about my second trip up there after I returned from the service.

Q. And who were present?

A. Mr. Musser himself I believe was all that was present at the time.

Q. What was the nature of those conversations?

A. I spoke to him about stocking tires and batteries, the Willard line of batteries.

Q. And what did he say?

A. Well, he told me that—he made me understand that he would like to stock them, but wasn't able to, although he was buying from us at the time whenever he needed something.

Q. Did he say anything about whether Atlas tires in those sizes were being supplied him?

[fol. 1226] A. No, tires didn't become plentiful until later on.

Q. Pardon? What was the answer, please?

(The answer was read.)

A. Tires became plentiful, say, in the earlier part of 1947. They were pretty scarce up through that time.

Q. At the time tires did become plentiful, did your sales then drop off?

A. Yes, they did.

Q. Calling your attention now to a service station at Friendly, Nevada operated by Dave Williams, did you ever call on this station?

A. Yes, I did.

Mr. Hall: What was the name of the dealer?

Mr. Somerville: Dave Williams.

By Mr. Somerville:

Q. When did you first contact Mr. Williams?

A. I contacted Mr. Williams shortly after I went back to work, after I got out of the service.

Q. That would be in 1946?

A. The beginning of 1946.

Q. Were you able to sell him?

A. I sold him, yes.

Q. What items did you sell him?

A. I sold him most everything, that is, in the line of a

service station line; tires, and batteries, and fan belts, [fol. 1227] and hose, and cables.

Q. How long did you continue to sell Mr. Williams these tires and batteries?

A. Up to the time that tires became plentiful.

Q. That would be about the end of 1947?

A. Approximately.

Q. At that time——

Mr. Hall: Pardon me. I didn't get that answer. What was it, please?

(The answer was read.)

By Mr. Somerville:

Q. When tires became plentiful, did you contiue to sell tires and other accessories to Mr. Williams?

A. No, only those sizes which he wasn't able to secure from Atlas or Standard Oil.

Q. Was there a period in which batteries were short?

A. Yes.

Q. Were you able to sell batteries to Mr. Williams after they became plentiful?

A. No.

Q. Were you able to sell miscellaneous accessories,—I am talking now about oil filters, spark plugs, and other items, to Mr. Williams?

A. Yes, I sold him quite a few oil filters and cables and hose, radiator hose, and other accessories, flash lights, [fol. 1228] and flash light batteries.

Q. Are you continuing to sell tires, tubes and batteries to Mr. Williams?

A. No, our sales have just about fallen off to nothing, outside of a little recapping that he——

Q. Are you making any sales of those miscellaneous accessories?

A. No.

Q. When were the last substantial sales made to Mr. Williams?

A. I couldn't say offhand, but it is at least six or eight months. I would have to look at the records.

Q. Were any conversations held with Mr. Williams concerning the falling off in his purchases?

A. Yes. He said that he——

Mr. Hall: Objected to as hearsay.
The Court: Overruled.

By Mr. Somerville:

Q. Just answer "Yes" or "No."
A. Yes.
Q. When did such conversations occur?
A. At several different times on my calls there. I usually stopped there once a week.
Q. In what year would you place some of them?
A. It was 1947, and also right up to the present time.
Q. I am talking now about the period after you were [fol. 1229] unable to make additional sales. Did you again approach him with respect to continuing to stock your items?
A. Yes.
Q. When did you approach him?
A. On which particular item?
Q. When tires and batteries became plentiful?
A. Well, I approached him on tires and batteries about the time they started to become plentiful; after his sales with us dropped off, I wanted to know why.
Q. When these conversations were held, who were present?
A. Mr. Williams. I spoke to him personally.
Q. Where?
A. There at his place of business.
Q. And what was said?
A. He told me——

Mr. Hall: Objected to as hearsay.
The Court: Overruled.
The Witness: He told me that he would have to sell Atlas tires and Atlas batteries, and that he wasn't allowed to put Fiske tires on a Standard credit card in case a customer came in and wanted to put a tire on a credit card.

By Mr. Somerville:

Q. Thereafter you were unable to sell him; is that correct?
A. Yes. We sell him, as I say, recaps, and sometimes [fol. 1230] a few other small items, but it has just about fallen off to nothing.
Q. I would like to clarify a point here with respect to Mr.

Musser. Did you continue to sell Mr. Musser anything after the conversations that you related concerning the tires? This is after tires became plentiful. Did you continue to sell him?

A. Yes, we sold him. I don't just know the approximate amount, because our other salesman took care of him in that territory.

Q. You have no knowledge of whether you sold him or not?

A. But I am pretty sure we sold him right along a certain amount of merchandise.

Q. What type of merchandise?

A. Well, we did all his recapping and he would pick up—buy things from us; different items.

Q. Don't be so general; be specific. What items?

A. Well, tires and batteries, Willard batteries.

Q. He continued to purchase them right up——

A. A certain quantity. He never did stock a complete line, because he wasn't able to, but he did have several batteries in stock, Willard batteries.

Q. Did he stock these along with Atlas batteries?

A. Yes.

[fol. 1231] Q. Did he display them with Atlas batteries?

A. He never had them out in the open. They were more or less out in the back.

Q. How long did you sell Mr. Mills tires, tubes and batteries?

A. I sold him up to the time I went into the service.

Q. Do you have any knowledge whether sales were made after that time?

A. Yes, they were made up to the time—it must have been in the latter part of 1942, that the government came in and took over his equipment.

Q. That was during the period of the shortage?

A. Yes.

Mr. Somerville: I think that will be all.

The Court: Cross-examine.

Cross-examination.

By Mr. Hall:

Q. Do you operate what is referred to in the trade as a "pie wagon"?

A. We operate a supply wagon; that is, we have trucks that are equipped with automotive supplies.

Q. And those trucks are loaded with merchandise that is sold to the dealers directly from the truck?

A. They are loaded with merchandise, yes. They aren't [fol. 1232] sold direct off the truck. Orders are usually taken previously.

Q. Well, is the truck just for the purpose of displaying samples, or do you sell dealers any merchandise off the truck?

A. The trucks are made—are for the purpose of delivering our own merchandise, and also displaying it.

Q. Do you make outright sales off the truck of merchandise that has not been previously ordered?

A. To who?

Q. To the dealers?

A. In some cases, yes. We pay a license to do it, though.

Q. Now after you got back from the war, did you handle this Nevada and northern California territory yourself?

A. We had salesmen that covered that area, but I took care of that area on different occasions, being the head of the sales department.

Q. Well, your concern handles Fiske tires and tubes, and Fiske batteries, doesn't it?

A. They distribute Fiske tires and tubes.

Q. And they have done that for 10 years or more?

A. Yes, more than that. I would say twelve.

Q. Now, presently what is the percentage of profit that your concern makes on the sale of Fiske tires?

[fol. 1233] A. Is that——

Mr. Somerville: I object to that question as irrelevant and immaterial.

Mr. Hall: If for no other purpose, if the court please, it at least shows bias.

The Court: Overruled. You may answer.

The Witness: Well, before I can answer that, you would have to tell me what type of trade.

By Mr. Hall.

Q. Well, let's take the retail, service station trade.

A. To the service station trade?

Q. Yes.

A. That would be wholesale. The amount of profit made would vary with the amount of tires the individual sold.

Q. And between what percentages would the profit vary?

A. The gross profit would be between 15 and 25 per cent.

Q. Going to your concern; is that right?

A. That's right.

Q. Now, what would be the profit made by the retail dealer on the same merchandise?

A. His profit would vary between 25 to 35 per cent.

Mr. Somerville: I object to that as irrelevant and immaterial, and not within the scope of the complaint.

[fol. 1234] The Court: Read the question, please.

(The question and answer were read.)

The Court: the objection is overruled, and if there was a motion to strike, it will be denied. Go ahead.

By Mr. Hall:

Q. Now, what would be the profit or the percentage of profit to your company on the sale of Fiske batteries to retail service station dealers?

A. Our percentage?

Q. Yes.

A. That would vary again with the amount purchased over the period of a year.

Q. Between what percentages would it vary?

A. I would say on batteries it would vary—to a service station it would be around 20 per cent.

Q. To what?

A. I would say between 15 to 20 per cent.

Q. 15 to 20 per cent. Now, what would be the retail service station dealer's percentage of profit on batteries?

A. His would vary between, oh, 25 to 40 per cent.

Q. Now, you mentioned the fact that I think two of these dealers you referred to mentioned Standard Oil credit cards. Is it a fact that Mr. Mills told you that he wanted to handle tires that he could credit or that he could charge on the Standard Oil credit card account?

A. Not necessarily, no.

[fol. 1235] Q. Well, I am asking you what he said.

The Court: Is that what he said?

The Witness: No.

By Mr. Hall:

Q. Well, tell me what he said about credit cards.

A. He said that he wasn't able to put a Fiske tire on a Standard Oil credit card.

Q. Was that all he said about credit cards?

A. Or other makes or other brands, outside of Atlas.

Q. Is that all he said about Standard Oil credit cards?

A. In other words, Standard Oil wouldn't honor——

Q. Now, wait a minute. I want just what he said, your recollection of what he said about Standard Oil credit cards.

A. Well, he just said that the company would not honor other merchandise other than Atlas on a Standard credit card?

Q. Is that all he said?

A. Yes, that was one of the things he said.

Q. Oh, what was the other thing he said?

A. He also said that he was—that it was the company's policy to supply him with tires and batteries.

Q. I am asking you what he said about credit cards.

Mr. Somerville: Mr. Hall, he apparently has exhausted his recollection.

[fol. 1236] The witness: I have told you what he said about credit cards.

The Court: Did he say anything else about credit cards?

The Witness: No.

The Court: All right.

By Mr. Hall:

Q. Now, what did Mr. Williams say about credit cards?

A. He said about the same thing.

Q. Well, did he say anything else than what you have said that the other gentleman said?

A. No, it amounted to about practically the same thing.

Q. How many retail accounts, separate retail accounts, have you canvassed, you personally canvassed, for tires, tubes, batteries or accessories since you came back from the war in 1946?

A. Oh, I had canvassed approximately a hundred.

Q. A hundred?

A. Yes.

Q. Is that all you have canvassed? I am not talking

about the ones you necessarily sold to, but I am talking about every one you visited to sell them either tires, tubes, batteries or accessories from the time you got back from the war in 1946 down to the present time.

A. That's right; about a hundred.

[fol. 1237] Q. How many did you sell?

A. I personally sold approximately 40 to 50 accounts.

Mr. Hall: 40 or 50. That is all. Thank you.

The Court: Any redirect?

Mr. Somerville: Yes, your Honor.

Redirect examination:

By Mr. Somerville:

Q. In the conversation with Mr. Mills, a part of the conversation was with respect to credit cards. What did he say about the contract, if anything?

The Court: If anything, that is right. That is better. We both have the same thought there.

The Witness: What was the question, please?

(The question was read.)

Mr. Hall: I don't know what counsel is alluding to when he says "contract," in connection with credit cards. I didn't know we had a contract relating to credit cards.

The Court: I will reframe the question. When you were talking about the credit cards, did he say anything about a contract?

The Witness: Yes. He said he had a contract with Standard Oil to handle their products.

The Court: Is that all?

The Witness: And they, if I remember correctly, they [fol. 1238] had done some work on his building for him, remodeled it, or something, the front end.

The Court: All right.

The Witness: And that is about all.

Mr. Somerville: That is all.

Mr. Hall: That is all.

The Court: All right. Step down. We will take a short recess, gentlemen.

(A recess was taken.)

[fol. 1239] Mr. Somerville: The Government will call Mr. Orville C. Musser. At this time we offer into evidence Government's Exhibit 86 for identification.

The Court: Shall I say subject to the usual objection and overruled?

Mr. Hall: I beg pardon, sir?

The Court: Are you offering it into evidence or identifying it?

Mr. Somerville: Into evidence.

The Court: I do not think he heard you.

Mr. Hall: Yes; I want an objection shown on the grounds the documents offered are irrelevant and immaterial. Thank you, your Honor.

The Court: All right, overruled; admitted into evidence.

Orville C. Musser, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Orville, O-r-v-i-l-l-e.

The Clerk: O-r-v-i-l-l-e.

The Witness: C. Musser.

The Clerk: C. is the middle initial. How do you spell your last name, please?

The Witness: M-u-s-s-e-r.

The Court: Have you any documents that you wish [fol. 1240] identified in conjunction with the examination of this witness?

Mr. Somerville: The documents for the Government will be produced by the witness.

The Court: The reason I ask, the clerk has to go and check some matters.

Mr. Somerville: I will call for those immediately, your Honor.

The Court: All right; because I want the clerk to go and check some records.

Direct examination.

By Mr. Somerville:

Q. Where do you live?

A. Portola, California.

Q. What is your occupation?

A. I have a little cab business at the present time.

Q. Have you ever operated a service station at Beckwith and Sierra at Portola?

A. Yes, sir.

Q. When did you take over the operations of this station?

A. The 1st of February, 1943.

Q. Did you enter into any agreements with Standard Oil Company concerning this service station for Standard Oil supplies?

[fol. 1241] A. Standard Stations, Inc.: yes, sir.

Q. Did you produce those agreements in response to a subpoena?

A. Yes, sir.

Q. Would you give them to me, please?

The Government would ask that certain documents produced by this witness, which include a sublease dated March 7th, 1944, between Standard Oil Company and Orville C. Musser, a distributor agreement dated March 7th, 1944, between Standard Oil Company of California and Orville C. Musser, and certain other documents relating to a service station located at Beckwith and Sierra Streets, Portola, California; be marked for identification.

The Clerk: Government's Exhibit 87 marked for identification.

By Mr. Somerville:

Q. After entering into those agreements, Mr. Musser, did you commence to handle Standard Oil products?

A. Yes, sir.

Q. Did that include lubricating oils, greases, and accessories?

A. Yes, sir.

Q. Do you know who the owner of the property is that is covered by your sublease?

A. Mr. Jack—Mr. John Schill of Portola.

[fol. 1242] Q. Mr. John Schill.

Mr. Hall: Would you pause just a moment, Mr. Somerville, to enable me to examine these documents which I expect you intend to offer into evidence?

Mr. Somerville: Yes.

The Court: All right.

By Mr. Somerville:

Q. After entering into these agreements, Mr. Musser, were any verbal instructions given you with respect to handling competitive oils and gasoline?

A. Yes, sir.

Q. When did such instructions occur?

A. Oh, very shortly after I had taken it.

Q. Where?

A. In the office.

Q. And by whom were such instructions given and who were present at the time they were given?

A. Just the instructor and myself.

Mr. Hall: I can't hear what the witness says. Would you read the answer, please?

(Answer read by the reporter.)

By Mr. Somerville:

Q. Who was the instructor?

A. Mr. Spencer Mains.

Q. Who is he?

A. He was a representative of the Standard Oil Company.

Q. Will you speak up so we can hear back here?

[fol. 1243] A. A representative for the Standard Oil Company I would say.

Q. And what were those instructions?

A. That there would be no other lubricating oils or gasoline handled by that station other than Standard Oil products.

Q. Had you experienced any demand up to that time for petroleum products other than the Standard products?

A. No, sir.

Q. Did you experience any demand for competitive petroleum products after that period?

A. Just my oil, some canned oil, like Quaker State, Penzoil. We did have several calls for that.

Q. Did you have salesmen for these competitive oils come around to you in an effort to sell their product?

A. Yes, sir.

Q. And did you buy their products?

A. No, sir.

Q. You were abiding then by the instructions given you by Mr. Mains?

A. That is right.

Q. During the period commencing the operation of your station in February, 1944 and during the war did you handle automotive accessories such as tires, tubes, and batteries, and miscellaneous accessories used by the motoring public?

[fol. 1244] A. Other than Standard Oil products?

Q. No. Did you handle these items?

A. Just the accessories.

Q. Accessories. You had no tires, tubes or batteries?

A. Very few; what we could get then.

Q. Was the Standard Oil Company able to supply you your requirements in those days?

A. No.

Q. Well, did you handle competitive products at this time?

A. When I could get them; yes.

Q. What was the answer?

A. When I could get them; yes.

Q. When you could get them. When did Standard Oil Company commence to supply you with your normal requirements of tires, tubes, and batteries?

A. Let's see; the last of—about 10 months to a year after the war was over, after rationing went off, gasoline rationing. That would be in—

Q. Were they at that time able to supply all of your requirements?

A. Well, no; not all the accessory requirements, no; and not all of the tire requirements, such as odd sizes in tires.

Q. Did you ever experience any difficulty in handling [fol. 1245] competitive accessories during the period that Standard was unable to supply you?

The Court: Just a minute, gentlemen.

(Brief intermission.)

The Court: All right; proceed.

Mr. Somerville: Do we have a pending question?

The reporter: Yes. (Pending question read.)

A. Well, they did complain some of that, not too much. They asked us—they would rather we wouldn't handle com-

petitive products, but I suggested that we still had to make a living.

Mr. Somerville: Don't go into any conversation.

Q. At the time that Atlas supplies became more plentiful were any instructions given you by any representative of the Standard Oil Company concerning the handling of competitive products?

A. Yes, sir.

Q. And when were such instructions given you?

A. That was, I would say, from 10 months to a year after the gas rationing went off.

Q. And who gave you those instructions?

Mr. Hall: Just pardon me a minute. What was that date?

The Witness: It would be 10 months to a year after the gas rationing went off, or approximately.

By Mr. Somerville:

[fol. 1246] Q. Who gave you those instructions, Mr. Musser?

A. The district manager by the name of Mr. Hodges.

Q. Where were the instructions given you?

A. At the office of the place of business.

Q. Were any other parties present at the time?

A. The tank truck driver and the accessory sales manager.

Q. What was his name, do you recall?

A. Mr. Mortenson.

Q. What were the conversations?

A. Well, they looked it over and decided that——

Mr. Hall: Now, just a minute. Object to the conclusion of the witness.

By Mr. Somerville:

Q. Just the conversation. What happened with respect to anything that was said? What was said?

A. They didn't wish to have any more competitive accessories handled in that station.

Q. Were any particular accessories mentioned at the time or was it general in character?

A. Just general competitive.

Q. And did Mr. Hodges or Mr. Mortenson or any of the other gentlemen present of Standard Oil Company inspect your station?

A. They looked at the inside pretty thoroughly; yes.

[fol. 1247] Q. And did they see any competitive items prior to the conversation?

A. A few.

Q. Did you purchase Atlas tires and tubes at any time, during which you were also able to get the—pardon me, I will withdraw the question. Did you purchase any competitive tires and tubes at any time when you were able to get the same sizes from Standard Oil Company?

A. No, sir.

Q. Did you then comply with the instructions which were given you by Standard Oil representatives, by Mr. Hodges?

A. Yes, sir.

Q. Did you comply with respect to tires, tubes, and batteries?

A. Yes, sir.

Q. Had anybody ever called upon you from the Rissone Super Service?

A. Yes, sir.

Q. Or Rissone's. Who?

A. Their salesman, Mr. Ferrari, has called a few times.

Q. And have you purchased any items of them?

A. Yes. When we couldn't get certain stuff from Standard Oil Company, accessories that we should have, we purchased from Mr. Rissone.

Q. Did you purchase any competitive items from them at [fol. 1248] any time when Standard was able to supply you?

A. No, sir.

Q. How often did Mr. Hodges call at your station?

A. Well, approximately four times a year.

Q. Did he inspect your station at times?

A. A little; yes.

Q. To your knowledge did he ever see any competitive tires, tubes, and batteries on the premises?

A. Yes, sir.

Q. And did he ever say anything further with respect to having these competitive products in the station?

A. Yes, sir.

Q. When did such conversations occur?

A. Just whenever I would have them.

Q. Pardon?

A. When I would have them in my station, when I had any competitive products he would ask——

Q. Were any conversations held at the time that Atlas tires, tubes, and batteries began to become plentiful? Do you recall any conversations during that period?

A. Just instructions of not to handle any competitive brands.

Q. Did these instructions go to anything other than tires, tubes, and batteries? Were they mentioned specifically or——

[fol. 1249] A. Accessories, also.

Q. Accessories, also. Did salesmen for competitive accessories supply companies continue to call on you?

A. Yes, sir.

Q. And did you continue to have customer demand for competitive items?

A. Yes, sir.

Q. Did you continue to stock competitive items?

A. No, sir; not the stuff we could get from Standard Oil Company, we did not.

Q. How long did you operate this service station, Mr. Musser?

A. Approximately four years.

Q. When did you leave that station?

A. December the 1st, 1947.

Mr. Somerville: That will be all.

Cross-examination.

By Mr. Hall:

Q. When did you first hear about this lawsuit?

A. I read some little article about something up here sometime back. I don't remember just when.

Q. When did you first talk to anybody about this lawsuit?

A. First talk to anybody? It has been, I would say, about six weeks ago, four weeks ago, approximately.

[fol. 1250] Q. Who was that?

A. I wouldn't know his name. I don't remember his name.

Q. A stranger to you?

A. Yes, sir.

Q. Did he show you any authority or credentials?
A. Yes, sir.
Q. An FBI man?
A. Yes, sir.
Q. What is your present business?
A. I have a taxi line.
Q. A what?
A. Taxi, taxi business.
Q. A taxicab?
A. Yes, sir.
Q. How many taxicabs?
A. One.
Q. If I understood you correctly, you said that some representative of the company told you not to handle accessories, and by "accessories" I mean something other than tires, tubes, and batteries, is that right?
A. That is right, sir.
Q. How many times did he tell you that?
A. Well, they asked me several times.
Q. Well, what do you mean by "several"?
[fol. 1251] A. Well, oh, as they would come in and there would be some item that was not Atlas.
Q. How many times, approximately, did that occur?
A. Oh, I would say three or four times.
Q. Three or four times. On those three or four occasions what accessories other than tires, tubes, and batteries were you handling that you had not purchased from Standard Oil Company?
A. Oh, there was gas caps, certain sizes of fanbelts that Atlas didn't handle, and wash mats for washing cars.
Q. Was that all?
A. And spotlights, fog lights, and car wash, carwashing soap. Let me see. And headlight fuses.
[fol. 1252] Q. What is that?
A. Headlight fuses.
Q. Headlight fuse?
A. Fuse, yes. We handle headlight fuses.
Q. I can't hear what you are saying. I am pretty close to you, but I can't hear you.
A. Automobile headlight fuses.
Q. Anything else?
A. Flashlights. Let's see. Certain sizes of oil filter elements that Atlas didn't have in stock. I don't remember if

there was anything more. There may be a little more stuff. I don't remember now just what it was, just the articles.

Q. Now, you had all of the articles you have mentioned in stock on the three or four occasions the Standard Oil representative called on you; is that right?

A. That's right, sir.

Q. Did he look it over?

A. Yes, sir. And I asked him if he had it, and he said he didn't have.

Q. He said he didn't have it?

A. They didn't have it in stock, no.

Q. Well, is it my understanding that he nevertheless told you that you couldn't handle it, even though they didn't have it in stock?

[fol. 1253] A. He asked me very emphatically not to handle it.

Q. Not to handle it?

A. And I told him I had to make a living and to satisfy customers.

Q. Over what period did these three or four instances occur? How long a period?

A. They started probably in 1945.

Q. In 1935?

A. '45.

Q. '45. Up to what time?

A. Well, we had pretty well run out of competitive merchandise by the end of—by the last three months of '46.

Q. Now, you purchased tires from Mr. Rissones, didn't you?

A. That's right.

Q. And you continued to purchase those up through 1947?

A. Odd sizes that Atlas didn't have in stock.

Q. Did all of these three or four conversations occur with Mr. Hodges?

A. Well, some of them with Mr. Hodges, and Mr. Martinson; between the two of them.

Q. Between those two?

A. Yes, sir.

[fol. 1254] Q. Did either of those Standard Oil men ever tell you that you were running a dirty service station?

A. Very often, sir.

Q. Very often?

A. In the last year.

Q. Did they, either of them, on any occasion, tell you that they had received complaints from customer concerning the condition of your station?

A. No, I don't recall.

Q. It might have occurred?

A. I don't recall that ever occurring, no.

Q. You don't recall it, but would you say that they didn't say that?

A. I don't believe they did. I wouldn't say that they did.

Mr. Hall: That is all.

Redirect examination.

By Mr. Somerville:

Q. Has anybody from Standard Oil talked with you about this case, Mr. Musser?

A. No, sir, nobody knew anything about it because I kept it to myself.

Mr. Hall: May I have the answer read?

(The answer was read.)

[fol. 1255] The Court: You said somebody complained about your running a dirty station. Did they go into that in any greater detail, about what they complained of, or on what, the grounds, or the restroom, or what?

The Witness: They said the grounds were—at times they were dirty, but it is very dusty and very windy up there at times.

The Court: Where is this located?

The Witness: Portola, California.

The Court: That is in Monterey County?

The Witness: In Plumas County.

The Court: What?

The Witness: In Plumas County.

The Court: Oh, in Plumas County. I see.

By Mr. Somerville:

Q. Did the Standard Oil Company ever furnish you with anybody to help keep the station clean?

A. No, sir.

Q. Did you ever buy any tires from Rissmes that Standard was able to supply at the time?

A. No, sir.

Q. How often did Mr. Hodges inspect your station and look through your stock?

A. Well, about four times; three to four times a year.

Q. Did he ever specifically call your attention to fan belts, for example, that might be competitive?

[fol. 1256] A. Yes, he did.

Q. Do you recall what type of fan belt it was and what happened?

A. I showed him the size of it, and we looked through the book, and it was an odd size that they did not handle.

Q. And was anything said at that time?

A. Well, just—he said it looked a little bad, having competitive merchandise.

Mr. Hall: What was that? Will you read that answer? (The answer was read.)

By Mr. Somerville:

Q. Did he instruct you to thereafter purchase from Standard or did he give you any instructions at all?

A. He asked——

The Court: Strike out the first part and leave the last part of the question: Did he give you any instructions.

Mr. Somerville: Yes.

Q. Did he give you any instructions?

A. Just to purchase Atlas brand products.

Q. By the way, how much gasoline were your pumping at this station when you took over?

A. It had been closed down for a number of weeks when I took over.

Q. How did the gallonage run thereafter, during the period that you operated the station?

[fol. 1257] A. It continually increased in gallonage right up until the last—I would say until just about the last month that I was there.

Q. Did you ever receive any complaints personally from any of your customers concerning the condition of the premises?

A. No, sir.

Q. Did you make an effort to keep the premises clean?

A. Very much so. I worked hard.

Mr. Somerville: That will be all.

Recross examination.

By Mr. Hall:

Q. Now, let me get this clear about the gallonage. What gallonage were you pumping on the average when you took over the station?

A. It was very small.

Q. What was it?

A. I don't remember just what the gallonage was, but it was very small.

Q. What is your best recollection?

A. I don't—I would say the first month it wasn't over—I don't believe over 1,000 or 1200 gallons.

Q. Not over 1,000 gallons, is that your answer?

A. That's not—possibly a little over, but not much.

[fol. 1258] Q. I see. When you left the station, what were you pumping on the average?

A. Well, we averaged—let's see—the last 9 to 11 months we run——

Q. Please speak a little louder——

A. Approximately between 90,000 and 100,000 gallons, the last months we were there.

Q. Between what?

A. Between 90,000 and 100,000 gallons the last 9 months we were there, or 11 months.

Q. Do you attribute the fact, if it be a fact, that your station was cleaner at that time, to the increased sale of gasoline?

A. Yes, sir.

Q. In other words, you believe that with a cleaner station you can sell more gasoline?

A. Well, that's right.

Q. Do you recall when it was that gasoline rationing ceased?

A. Let's see. Sometime in the last half of 1945, if my memory is correct.

Q. You took over during the war, didn't you, in 1943?

A. Yes, sir; shortly after I come out of service.

Q. Gasoline rationing was on then, wasn't it?

A. Yes, sir.

[fol. 1259] Q. All right. Now, what was your station pumping during the first month, let us say, after gasoline rationing ceased?

A. I don't remember, sir, just what it was.

Q. Well, approximately.

A. Well, let's see. It was approximately between eight and ten thousand gallons.

Mr. Hall: That is all. Thank you.

The Court: Anything further?

Redirect examination.

By Mr. Somerville:

Q. At the time you prepared to leave this station, Mr. Musser, did you receive any complaints from the owner of the property, Mr. Schill, regarding your operation of the property?

A. He was very much put out about it.

Q. What do you mean?

Mr. Hall: Wait a minute. I move to strike the answer of the witness as being a conclusion.

The Court: Yes, it may be stricken. He asked you if you received any complaints.

The Witness: No, no complaints.

By Mr. Somerville:

Q. Was there some conversation regarding your leaving with Mr. Schill?

[fol. 1260] Mr. Hall: Just a minute. If the court please, that is objected to as incompetent, irrelevant and immaterial, calling for hearsay, and not within the issues.

The Court: Yes, I think that calls for a self-serving declaration. Some other man may testify as to what he did, because it goes to intendment, but that is a little too far afield.

Mr. Hall: May the last answer of the witness go out?

The Court: I didn't hear it, keen as my hearing is. I wish my eyesight was as good as my hearing. The answer is stricken. Is that all?

Mr. Somerville: That is all.

Mr. Hall: That is all.

Mr. Somerville: At this point, your Honor, I would like to offer in evidence——

The Court: The clerk has it now. I didn't understand just what form of agreement it was. Are you offering it now?

Mr. Somerville: Yes, I offer this in evidence.

The Court: I didn't hear it once or twice, and I know he wants to make an objection.

Mr. Somerville: The government offers Exhibit 87 in evidence.

Mr. Hall: The defendant objects to each and all of the documents so offered on the ground they are irrelevant and [fols. 1261-1262] immaterial.

The Court: I have examined them. They are of the type heretofore admitted. The objection is overruled. They may be received in evidence.

The Clerk: 87 in evidence.

The Court: Gentlemen, the hour is late and we will adjourn, unless, as I said yesterday, you have some urgent short witness who is from a great distance. I gather that most of these people do not come from very great distances.

Mr. Driscoll: Well, I have some witnesses here from Nevada and San Francisco.

The Court: Well, it is pretty late. Bring them in tomorrow. When you have them down here and when you are just filling in, it is just as well to give precedence to the outsiders, the men who come from distances and whose business is disorganized by their being here, especially when you are dealing with men who are in an individual or a one-man business.

Tomorrow morning at 10:00 o'clock, gentlemen.

(Whereupon, at 5:15 o'clock p.m. Tuesday, May 18, 1948, an adjournment was taken until 10:00 o'clock a.m., Wednesday, May 19, 1948.)

[fols. 1263-1264] IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Leon R. Yankwich, Judge Presiding

UNITED STATES OF AMERICA, *Plaintiff*, *vs.* STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., *Defendants*.	No. 6159-Y-Civil

REPORTERS' TRANSCRIPT OF PROCEEDINGS

Los Angeles, California
Wednesday, May 19, 1948

APPEARANCES:

(As heretofore noted.)

[fol. 1265]

Los Angeles, California,
Wednesday, May 19, 1948, 10:00 a.m.

The Court: Cause on trial.

The Clerk: 6159, Civil, United States v. Standard Oil Company.

Mr. Driscoll: The government will call Mr. Robert F. Clapp.

ROBERT F. CLAPP, called as a witness by the plaintiff, being first duly sworn, testified as follows:

Direct examination

The Clerk: Take the stand, please, sir. What is your name, please?

The Witness: Robert F. Clapp.

The Clerk: Robert F., and the spelling of your last name?

The Witness: C-l-a-p-p.

By Mr. Driscoll:

Q. Where do you reside, Mr. Clapp?

A. 560 Tiopa Drive, in Pacific Palisades.

Q. What business or occupation are you engaged in?

A. I am an automobile dealer.

Q. What automobiles do you handle?

A. DeSoto and Plymouth.

Q. What is the address of that business?

[fol. 1266] A. That is 2201 Westwood Boulevard, Los Angeles—West Los Angeles.

Q. Is that operated by you alone?

A. No, I have a partner.

Q. Under what firm and style name do you operate?

A. Hughes & Clapp.

Q. Do you handle petroleum products, gasoline and lubricating oils?

A. No gasoline; lubricating oils.

Q. What type of lubricating oils do you handle?

A. Standard Oil.

Q. In response to a subpoena, Mr. Clapp, did you bring to the court with you certain documents and contracts?

A. Yes, I did.

Mr. Driscoll: May I have them, please?

(The documents were handed to counsel.)

Mr. Driscoll: The government will ask to have marked for identification a document entitled "Petroleum Products and Equipment Agreement," between the Standard Oil Company of California and Hughes & Clapp, 2201 Westwood Boulevard, West Los Angeles, California, dated November 22, 1944.

The Clerk: Government's Exhibit 88, marked for identification.

By Mr. Driscoll:

[fol. 1267] Q. Mr. Clapp, I hand you what has been marked for identification as Exhibit 88 and ask you what this document is, if you know.

A. Well, it is our contract with Standard Oil for the handling of their products and installation of equipment.

Q. And on the reverse side of the first page thereof there are some signatures. Do you know whose signatures those are?

A. Yes, that is my partner's signature. These I don't know. This one I do know.

Q. Whose signature is that?

A. That is the owner of the corner property.

Q. And the name is?

A. Nina G. Anderton.

Q. Now, pursuant to that agreement, the Government's Exhibit to which you have just testified, what, if anything, was done with respect to any installation of equipment?

A. Well, all equipment was installed, possibly not by Standard Oil, but on the orders of the Standard Oil Company.

Q. What was the cost of that equipment, if you know?

A. Approximately $3800.

Q. What arrangements were made, if any, for the payment of that?

A. To be paid off at so much a month over a period of 60 months, I believe $43.60 a month, or something like that.

Q. Do you know, then, what the cost of that equipment [fol. 1268] will be to you?

A. It will be around twenty-six or twenty-seven hundred.

Q. Are you in personal touch with the lubricating division of your firm, the operators?

A. I wouldn't say I was in too close personal contact with it, no.

Q. Do you or do you not know, of your own knowledge, whether any customers have requested lubricating oils other than the kind you handle?

A. No, sir, I do not.

Q. Pursuant to this contract, what lubricating oils do you handle?

A. Standard Oil.

Q. Do you know, Mr. Clapp, how much lubricating oil and greases you have purchased from Standard Oil since the inception of that contract?

A. I believe it is around 4500 gallons.

Q. And that would be over a period——

A. That is a period of three years.

Q. Three years.

A. It is about 4900 gallons. Pardon me.

Q. That includes the greases and lubricating oil?

A. Yes, sir.

Q. Do you know, of your own knowledge, Mr. Clapp, [fol. 1269] whether or not the lubricating department of

your company purchases any other greases or oil other than the petroleum products of Standard Oil?

A. From the standpoint of lubricating oils, I don't believe so.

Q. What type do you purchase, if you purchase any others?

A. Oh, we purchase what they call break-in oils, and possibly some other oils, that are furnished by the Chrysler Corporation.

Q. And that is pursuant to your dealership service of cars?

A. Yes.

Mr. Driscoll: Very well. I think that is all, your Honor. You may examine, Mr. Hall.

[fol. 1270] If I may, Mr. Hall, first offer this before you examine?

Mr. Hall: Certainly.

Mr. Driscoll: The Government now moves the admission of Exhibit 88 for identification. I call attention to paragraph 5 thereof in which it is agreed that

> "Dealer shall pay to Company for the use of Company's facilities on said premises, as follows: $43.66 per month payable on the first of each month in advance for 60 months beginning January 1st, 1945."

And paragraph 11, which is:

> "The term of this agreement shall be from January 1st, 1945 to December 31st, 1949 but if during said period said dealer shall not have purchased from Company 36,000 gallons of lubricating oils and greases, this agreement shall continue in full force and effect until such time as said number of gallons of lubricating oils and greases have been purchased by Dealer from Company."

Mr. Hall: Objection is made by the defendants to each and all of the documents offered on the grounds that they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: Government's 88 in evidence.

Mr. Hall: Are you done with your examination, Mr. [fol. 1271] Driscoll?

Mr. Driscoll: Yes, sir.

Cross examination.

By Mr. Hall:

Q. Are you entirely satisfied with Standard Oil's products?

A. Yes, sir.

Mr. Hall: That is all.

Mr. Driscoll: That is all.

The Court: All right; call your next witness.

Mr. Driscoll: That is all, Mr. Clapp, thank you. Call Mr. Jim Callicoatt.

JAMES C. CALLICOATT, called as a witness by plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: James C. Callicoatt.

The Clerk: James C., and what is your last name?

The Witness: Callicoatt, C-a-l-l-i-c-o-a-t-t.

The Clerk: C-a-l-l-i-c-o-a-t-t?

The Witness: Yes, sir.

Direct examination.

By Mr. Driscoll:

Q. Where do you reside, Mr. Callicoatt?

A. 7731 Dumbarton Avenue in Los Angeles.

[fol. 1272] Q. What business are you engaged in?

A. I am a service station operator, sir.

Q. In response to a subpoena did you bring with you documents?

A. Yes, sir; I brought my agreement of a contract.

Q. Will you let me have it, please?

A. Yes, sir.

Mr. Driscoll: The Government will ask to have marked for identification the documents produced by the witness entitled "Dealer Agreement TBA," dated July 1, 1946, between the Standard Oil and James C. Callicoatt of the premises at 1697 Pacific Avenue, Venice, California.

The Clerk: Government's Exhibit 89 marked for identification

By Mr. Driscoll:

Q. Mr. Callicoatt, I now hand you what has been marked as Government's Exhibit 89 for identification and ask you to examine it, and after examination state, if you know, what this document is?

A. Yes, sir; It is a TBA agreement between Standard Oil and myself to operate the business which I now operate.

Q. After entering into this agreement to which you have testified, Mr. Callicoatt, did you have at that time or approximately at that time any interview with any official of the Standard Oil Company?

A. Yes, sir.

[fol. 1273] Q. Where and when did that interview take place and who was present?

A. At the time of the signing of the contract in Long Beach.

Q. Where?

A. In Long Beach.

Q. Long Beach. And with whom did you have an interview?

A. Mr. Furrer, I believe.

Mr. Hall: I did not get that name. What was that name?

The Witness: Mr. Furrer.

The Reporter: Do you know how to spell it?

The Witness: No; I don't

By Mr. Driscoll:

Q. And what was that conversation?

Mr. Hall: That is objected to as no proper foundation laid.

The Court: Read the question again.

(Question read by the reporter.)

The Court: Overruled.

Mr. Driscoll: You may answer.

A. We discussed the contract and the agreement of contract and the signing of it, sir.

Q. At or approximately at that time did you have any further conversations with him or with any other official [fol. 1274] of the company?

A. Yes, sir.

Q. And who was present at that interview?

A. A representative, I imagine a sales representative, sir. We were together and discussed the items to be stocked and went through catalogs and operation system and so forth.

Q. And was anything said as to your carrying and stocking tires, tubes, and batteries?

Mr. Hall: Just a minute. No proper foundation has been laid for the conversation.

The Court: I think you had better lay a better foundation.

Mr. Driscoll: I thought I had, at the time of the signing of the contract with a sales representative.

Mr. Hall: No. Pardon me, sir. He said this was after that. The time is entirely vague.

Mr. Driscoll: Very well.

Q. Subsequent to your interview and conversation with Mr. Furrer, Mr. Callicoatt, did you have a conversation with some other representative?

A. After my conversation with Mr. Furrer, sir.

Q. And at what time, when, and where?

A. In the Long Beach office, just after signing the contract, as best I remember, sir.

[fol. 1275] Q. Now, what was said in that conversation?

A. That was the discussion of the products and the operation schedule.

Q. From this sales representative did you receive any instructions as to the items of merchandise you were to be supplied with or carry?

Mr. Hall: Now, if the court please, that is leading. Objected to as leading and suggestive, calling for the conclusion of the witness. I think the witness should be asked what was said.

The Court: I think so. Please reframe your question.

By Mr. Driscoll:

Q. What was said at this conversation, Mr. Callicoatt?

A. Just now, sir? The last question?

Mr. Driscoll: I will withdraw that question.

Q. At the time that you had this interview with the sales

representative was anything said as to the stock of merchandise?

A. Yes, sir: tires, tubes, and batteries, and accessories would be purchased from our accessory warehouses.

Q. And did you follow those instructions, or have you?

A. Yes, sir.

Mr. Hall: Just a minute. That calls for—I move to strike the answer of the witness until I can object.

The Court: All right.

[fol. 1276] Mr. Hall: Objected to as calling for a conclusion of the witness and leading and suggestive. The examiner is putting words in the witness' mouth that the witness has not testified to.

The Court: All right. Read the question.

(Question read by the reporter.)

The Court: The objection is sustained. The witness should be asked what he did.

By Mr. Driscoll:

Q. Have you purchased items, miscellaneous accessories, or tires, tubes, and batteries other than those handled, sponsored and distributed by Standard Oil?

A. Yes, sir.

Q. During what time did you purchase those?

A. During the early part of '46, sir.

Q. Since this interview you had to which you have testified at the time you entered into the contract have you had any further interviews with Standard Oil Representatives?

A. Yes, sir.

Q. When and where did that interview take place?

A. Early part of '48 was the most important interview. My supervisor brought my bonus check.

Q. And what is his name?

A. Mr. Jim Barber.

Q. And what was that conversation?

[fol. 1277] A. He stated that it could be better, and it seemed bad from my books or the units record to buy thousands of dollars worth of tires, tubes, and batteries and a small amount of miscellaneous accessories; and that in the future my bonus check would be much better if I bought more accessories.

Q. Since that time have you purchased any outside miscellaneous accessories?

A. Yes, sir.

Q. And were those items that you purchased items which are also sponsored and sold by Standard Oil?

A. Yes, sir.

Q. Do you include in those miscellaneous accessories tires and tubes and batteries?

A. Yes, sir.

Q. I will ask you again, other than tires, tubes, and batteries have you purchased any miscellaneous accessories outside of the line sponsored by Standard Oil?

A. Yes, sir; when there is quick demand for it, sir.

[fol. 1278] Q. When there is quick demand?

A. Yes, sir.

Q. Now, have you had customer demand for oils, lubricating oils, other than the products sold and distributed by Standard Oil Company?

A. I have, sir.

Q. Have you purchased any such outside oils?

A. No, sir.

Q. Do you have any customers who buy their gasoline from you but request lubricating oils other than Standard oils?

A. Yes, sir.

Q. Have you any such customers that request lubricating service of you?

A. Yes, sir.

Q. What do you do when such request is made?

A. Sir, I have customers that bring their own oil. I will lubricate their car and use their oil.

Q. What kind of oil do they bring?

A. I have one that brings Ring-Free, and I have one that brings Quaker State.

Q. Do you have any customer demand for tires other than the Atlas brand?

A. Yes, sir.

Q. Do you stock such tires?

[fol. 1279] A. No, sir.

Q. Are you able to supply the demand that is made of you for brands of tires other than the tires sponsored by Standard Oil?

A. Yes, sir.

Q. How do you do that?

A. Some—well, for instance, a customer comes in and demands or I can't sell him an Atlas tire. He wants a U. S. Royal or a U. S. tire. I contact the U. S. Rubber dealer in the locality and purchase the tires from them and mount them on the customer's car right there.

Q. You do not display them?

A. No, sir.

Mr. Driscoll: One moment, if your Honor please.

Q. Now, as to these miscellaneous items, Mr. Callicoatt, which you purchased on quick demand for customers,—

A. Yes, sir.

Q. —do you regularly stock them from sources other than Standard Oil?

A. No, sir.

Q. I have forgotten, and did you or did you not testify that you never carried any outside oils, brands other than Standard Oil?

A. No, sir, I do not carry any others.

Q. You do not stock them?

[fol. 1280] A. No, sir.

Mr. Driscoll: You may examine.

Mr. Hall: Are you going to offer your exhibit in evidence?

Mr. Driscoll: Thank you, counsel.

The government will offer for admission in evidence Exhibit 89, for identification, TBA agreement dated July 1, 1946 between James C. Callicoatt and Standard Oil Company.

Mr. Hall: The defendant objects to the documents offered, and to each of them, on the ground they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: Government's Exhibit 89 in evidence.

Cross examination.

By Mr. Hall:

Q. You have referred, Mr. Callicoatt, to a conversation you had with, I think it was, Jim Barber, when he brought you a bonus check?

A. Yes.

Q. Do you remember that conversation?

A. Yes, sir.

Q. He pointed out at that time, did he not, that you could include accessories purchased from Standard, in addition to tire, tubes, and batteries, in the amount upon which the bonus was figured?

[fol. 1281] A. Yes, sir.

Q. And it was his suggestion that if you would buy more of those accessories, and I am not talking about tires, tubes and batteries, but if you would buy more of those accessories from Standard you would make a bigger bonus? Wasn't that the substance of his conversation?

A. Yes, sir.

Q. Now, you mentioned that two people brought in their own oil when you serviced their cars; that one of them brought Ring-Free oil and the other brought Quaker State. Do you remember that?

A. Yes, sir.

Q. Were those the only two customers you had that requested oils that you didn't carry?

A. No, sir.

Q. How many others were there?

A. Sir, there is quite a few over a period of a year. Should I say they are tourists? I don't know the customers. They are not regular customers, but they have their oil with them.

Q. They have their oil with them?

A. Yes, sir.

Q. When they have their oil with them, they want you to use the oil they have with them?

A. Yes, sir.

[fol. 1282] Q. Before you became the operator of this station, Mr. Callicoatt, what were you doing? What was your business?

A. I was manager of a Douglas welfare station at Santa Monica.

Q. Employed by Douglas, were you?

A. Yes, sir.

Q. To make a long story short, Standard Oil Company set you up in business down there in Venice, didn't they?

A. How do you mean, sir?

Q. Well, I mean that that was the first time you had operated an independent dealer station?

A. On my own, yes, sir.

Q. And they helped you to do it, didn't they?

A. I had no assistance from any company salesman or management, if that is what you mean.

Q. You had no assistance?

A. Not that I recall. I had no——.

Q. You didn't own the property, did you?

A. No, sir; that is, the company owned it.

Q. Who first approached you to get you to take over that property?

A. Nobody approached me. I approached them.

Q. Oh, you went to Standard, did you?

A. Yes.

Q. And asked to be made a dealer?

[fol. 1283] A. Yes, sir.

Q. Now, how many brands of Standard lubricating oil do you regularly stock?

A. How many brands, sir?

Q. Yes. Do you have the RPM?

A. Yes, sir.

Q. Do you have Zerolene?

A. Yes, sir.

Q. Do you have Standard Penn?

A. Yes, sir.

Q. How many grades of each of those brands do you carry?

A. I carry from 10 to 50.

Q. From what?

A. From No. 10 to 50 in each oil.

Q. How many grades would that be in each one?

A. Five, sir.

Q. Five of each one?

A. Yes, sir.

Q. So that would make 15 grades all together that you carry in the station?

A. Yes, sir, besides my—yes, sir.

Q. Do you carry that in bulk in the station?

A. Yes, sir.

Q. In what they call highboys? Is that the name?

[fol. 1284] A. Yes, highboy drums; yes, sir.

Q. Big drums, is that it, with a faucet on the top?

A. That's right, sir.

Q. Where do you keep those drums? In the station office?

A. Yes, sir. I have small drums displayed in the office, and I have my lubricating oils in the back in plain sight, displayed.

Q. How many gallons does each of those big drums contain?

A. 30, sir.

Q. 30?

A. Yes, sir.

Q. So you have containers there for about 450 gallons?

A. Yes, sir.

Q. Now, you mentioned cases where customers expressed a preference for some oil that was not a Standard Oil Company product like Ring-Free and Quaker State?

A. Yes, sir.

Q. Do those types of customers express a preference for just one type of oil or does one express a preference for one make and another for another make, and so on?

A. I have today the same customers. They are still using the same oil that I mentioned, and they still bring it with them.

[fol. 1285] Q. They still bring it with them?

A. Yes, sir.

Q. But isn't it true that one customer likes one kind of oil and another likes another?

A. Apparently.

Q. Are you satisfied with your relations with Standard?

A. Yes, sir.

Mr. Hall: That is all.

Redirect examination.

By Mr. Driscoll:

Q. Mr. Callicoatt, are you paid a salary by the Standard Oil Company?

A. No, sir.

Mr. Hall: What was that?

Mr. Driscoll: Are you paid a salary by the Standard Oil Company?

Mr. Hall: Did he say "No, sir"?

(The answer was read.)

By Mr. Driscoll:

Q. When you first started to operate that station, Mr. Callicoatt, how much rent did you pay?

A. One cent a gallon.

Q. At that time how many gallons were you pumping, approximately, if you know?

A. Well, the station was closed temporarily when I went [fol. 1286] in, and it was very low gallonage.

Q. Was there a maximum or a minimum rent on the gallonage basis?

Mr. Hall: Doesn't the contract speak for itself?

Mr. Driscoll: I am asking when he first started. It might have changed. I don't know how many of these contracts there are.

Mr. Hall: I don't think there is a proper foundation laid for the question, if the court please. Objection on that ground.

The Court: I think a better foundation should be laid.

Mr. Driscoll: I didn't hear that, your Honor.

The Court: I say, I think a better foundation should be laid.

By Mr. Driscoll:

Q. How many gallons were you pumping when you went into this station?

A. I checked my books this morning before I came down, and on July 1st, I think, I am not positive, it was twelve hundred and some odd gallons for the month of July. I am not sure.

Q. How many gallons a month are you pumping at this station now?

A. It varies, but it is close to 8,000.

Q. In other words, you started at 1200 and have gone to 8,000 gallons?

[fol. 1287] A. Something like that, sir; approximately.

Q. I call your attention to Exhibit 89, paragraph 6, and ask you whether the rent that is provided for in that paragraph of $4.50 a month, plus 1 cent a gallon, with a minimum of $86.50 is the rent that you still pay?

Mr. Hall: Now, just a minute before you answer that question.

No objection.

Mr. Driscoll: Will you read the question to him, please.

(The question was read.)

The Witness: Yes, sir.

By Mr. Driscoll:

Q. At the outset of this contract and until such times as you went to 8,000 gallons you were paying a rent of $86.50; is that correct?

A. Yes, sir.

Q. I think you have testified, Mr. Callicoatt, that you do not carry in stock tires, tubes and batteries other than those sponsored by Standard Oil, nor do you carry in stock lubricating oils other than those marketed and sponsored or sold by Standard Oil. I ask you whether or not your sales would be more or less if you carried the brands of tires, tubes and batteries and lubricating oils with respect to which you have testified you have a demand.

Mr. Hall: Now, just a minute. That question is objected [fol. 1288] to as calling for a conclusion of the witness, speculation and conjecture, and no proper foundation laid.

Mr. Driscoll: Your Honor please, the witness has testified that he has customer demand for oils other than the Standard oils, and that he has demand for tires, tubes and batteries other than the products sponsored and distributed by Standard Oil. He has also testified he does not stock them but goes out and gets them on a quick demand basis. Counsel for the defendant has gone into the question of profits and bonuses. I think I have a right to let this witness explain why he purchases these outside products on quick demand and whether or not his sales would be greater, in reference to defendants opening up the question of profits.

The Court: The objection will be sustained. The defendant has a right in questioning the motive of the witness to go into the question of profit. That is the only materiality in order to show that perhaps he is motivated by making a greater profit than with other products. That is the only question we are interested in, is whether this tie-in, if I may so characterize it, between Standard Stations and various stations which it uses as outlets for its products under one arrangement or another are violative of the

law as restraints upon commerce, either under the Sherman Anti-trust law or the Clayton Act, or both. That is all we are interested in, and nothing else. Anything that [fol. 1289] does not bear upon that is not material.

Anything further?

Mr. Driscoll: Nothing further, your Honor.

Recross examination.

By Mr. Hall:

Q. When you took charge of that station, the building and equipment were already in, weren't they?

A. Yes, sir.

Mr. Hall: That is all. Thank you.

The Court: Step down. Call your next witness.

Mr. Driscoll: I call Mr. Warren F. Emerson.

Warren F. Emerson, called as a witness by the plaintiff, being first duly sworn, testified as follows:

The Clerk: Take the stand, please, sir. What is your name, please?

The Witness: Warren F. Emerson.

The Clerk: E-m-e-r-s-o-n?

The Witness: That's right.

Direct examination.

By Mr. Driscoll:

Q. Where is your residence?

A. At 8940 47th Avenue, San Francisco.

[fol. 1290] Q. And your occupation?

A. I am a salesman.

Q. How long have you been a salesman?

A. Since the 19th of March, 1948.

Q. What was your business——

Mr. Hall: I beg your pardon. I didn't get the year. What year was that?

The Witness: 1948. This year.

By Mr. Driscoll:

Q. What was your business and occupation, if any, prior to that time?

A. I operated a Chevron station at 48th Avenue and Fulton; at 7200 Fulton Street, San Francisco.

Q. How long had you operated that station?

A. Since August 16, 1940.

Mr. Driscoll: The government would like to have marked for identification a document purporting to be a distributor agreement dated August 15, 1940, between Standard Oil Company of California and Warren F. Emerson.

The Clerk: Government's Exhibit 90, marked for identification.

By Mr. Driscoll:

Q. Mr. Emerson, I hand you what has been marked as Exhibit 90, for identification, and ask you to examine this document, and after examination state, if you can, what it is.

A. Well, it is a distributor agreement which I signed [fol. 1291] when I first took over the station.

Q. You signed it, you say. Are you referring to a signature appearing at the bottom of the second page of the exhibit?

A. Yes, sir.

Q. Warren F. Emerson?

A. That's right.

Q. Do you know whose signature other than yours appears on the document?

A. No, I am not familiar with that man.

Q. At the time you entered into this contract to which you have testified, Mr. Emerson, did you have any interviews or conversations with anyone representing the Standard Oil Company?

[fol. 1292] A. Previous to my operating the service station on my own, why, I worked for the Standard Stations, Inc. I was manager of four different stations for them in the City of San Francisco and I had been manager of this same station previous to the time I took it over. In 1940, when I took over the station there at 48th and Fulton, the business had run down considerably, and, as I say, I had been manager there before and I wanted to build it up and have a business of my own. I had been successful in build-

ing up three or four other stations that the company operated and I figured if I could do it for the company, I could do it for myself. So I asked for 48th and Fulton and I was given that station to operate. The business had——

Mr. Hall: Just a minute. I think that answers the question. A lot of this is not responsive to the question.

The Court: All right. That is not a valid objection in this court. It is in the State court, but we are not required to follow the State court here. Somebody put that absurd principle into the Statutes that the answer be restricted if not responsive. It has never been the law of California until somebody in the Legislature made it so. The only objection to an answer is materiality and relevancy, but it is not necessary merely because we adopt the Socratic method of asking questions and receiving answers, does not mean that the person, when you ask him a question, [fol. 1293] cannot give a narrative of matters that occurred, without being prompted every minute or so by questions.

But I think his answer was complete and the rest of it was not called for by the question. It is better to limit the answer so that we know that he will not bring in foreign matter. But the mere fact that it is not responsive is not a good objection which we observe in the Federal Court.

Go ahead.

A. Well——

The Court: No. You have completed your answer.

Mr. Driscoll: Yes.

Q. After the preliminary negotiations that you have testified to at or approximately at the time that you signed the contract did you have a conversation with a representative of the Standard Oil Company relative to your operation of this station?

A. Yes, sir.

Q. And what was that conversation, where did it take place, and who was present?

A. Well, it took place at the station and in regards to the operation of the station.

Q. Who was there and when did it occur, if you know?

A. Mr. Monard, I believe, was the superintendent at that time when I first took that station over. And it was con-

versation dealing with the operation of the service [fol. 1294] station, keeping the premises clean and orderly, and selling the company's stock of Atlas tires, batteries, tubes and other accessories that they handled.

Q. And during the period of time in which you operated this station did you handle any other tires and batteries or miscellaneous accessories other than those sponsored or distributed by the Standard Oil?

A. Do I get your question that you mean during this whole entire period of eight and one-half years that I was there?

Q. Well, during any period of time did you handle any other than those brands?

A. Yes, sir.

Q. And when was that?

A. Well, shortly after the start of the war materials became scarce and the company were not able to supply me with numerous articles like cables; there was a shortage of cables; there was a shortage of fan belts; there was a shortage of tires. Well, the fact is tires were rationed, and after the rationing of tires was lifted, why, there was an acute shortage of tires, tubes, and batteries.

Q. Prior to that time of shortage had you carried any items of merchandise other than those sponsored or sold by the Standard Oil Company?

A. No, sir.

[fol. 1295] Mr. Driscoll: At this time the Government will ask to have marked for identification a document purporting to be a dealer agreement TBA dated November 15, 1945, between Standard Oil and Warren F. Emerson.

The Clerk: Government's 91 marked for identification.

By Mr. Driscoll:

Q. Now, Mr. Emerson, at any time subsequent to the time that you testified that there was a shortage and you carried other items did you have any further conversations with representatives of the Standard Oil Company?

A. In November of 1945 the company came out with the dealer agreement TBA.

Q. Continue.

A. And they came out with that due to the fact that there was a shortage of items and that gave me permission to buy and fill in items that they could not supply.

Q. I hand you what has been marked as Exhibit 91 for identification and ask you to examine this and state, if you know, what it is?

A. Yes; that is the dealer agreement TBA that I signed in 1945, November.

Q. And you state that you signed it. Are you referring to the signature "Warren F. Emerson" appearing on the second page thereof?

A. That is right.

[fol. 1296] Q. Do you know whose signature it is over the legend "Assistant General Manager of Standard Oil Company"?

A. I have heard of the man but I never have met him.

Q. After you had signed this dealer agreement TBA did you have any conversation with representatives of the Standard Oil Company relative to your handling outside products?

A. Yes, sir.

Q. When was that conversation?

A. Well, Mr. Krisel used to come around about——

Mr. Hall: Just a minute.

A. —every week.

Mr. Hall: We object to this and move that the answer be stricken as irrelevant and immaterial.

Mr. Driscoll: He is laying the foundation for a conversation.

The Court: This is a preliminary question. All right; fix your time when the first conversation was.

By Mr. Driscoll:

Q. Approximately when was the first of those, if there were more than one conversation?

A. Well, after the signing of this agreement, the second agreement?

Q. Yes.

A. Well, there was a conversation at the time he brought out the agreement.

[fol. 1297] Q. What was said at that time?

A. Well, he stated what the agreement was; that it gave me permission to buy and fill in on stock that they were short on. And I thought that was a good idea, because I had been doing it for quite some little while, anyway. I was forced to because they didn't have the stock like fan belts and

cables, and even spark plugs were critically short at one time.

Q. When was the next time, if there was a further conversation, that anything occurred in that regard? I will withdraw the question. Directing your attention to a month, or the fall of 1947, last fall, I will ask you whether or not at that time you had any conversation with any representative of the Standard Oil Company?

A. Yes, sir.

Q. And who was that and where did it take place and who was present?

A. Well, Mr. Krisel called on the station every week or approximately every week, and last fall material and supplies and equipment, that is, stock, the critical shortage period is over or was over, the company were beginning to get fan belts back, and cables, and tires and tubes were becoming gradually more plentiful. So he began telling me that I would have to stock more Atlas products. You see, during the critical shortage I——

[fol. 1298] The Court: Don't give explanations. You are on the conversation. Just go on with what you told him.

A. Well, I had built up a considerable stock of competitive products so as to have merchandise on hand to sell and take care of the requirements of anybody that happened to come in the station that needed a fan belt or a cable or a spark plug. I wanted to have the size that they needed for their car. And Mr. Krisel told me that due to the fact that they were getting their stock back in shape, that he wanted me to sell more Atlas products. And he not only told me once but numerous times. Every time he would come out to the station he would look around to see how my stock was. And I did start filling in with the Atlas products that they had. Whenever I needed, for instance, fan belts—I had a complete stock of Gates fan belts that I had put in during the critical shortage period—and, as their fan belts came back and as the Gates belts ran out, I replaced what belts I needed with Atlas belts. I did that with everything.

By Mr. Driscoll:

Q. Did you have other different conversations subsequent to that time?

A. Well, that was generally the theme of the conversation on his visits, was that he wanted me to sell more Atlas products and get rid of the competitive stock I had on hand.

Q. Did you have any customers who requested of you items of merchandise, tires, batteries, accessories, or oils [fol. 1299] other than the products that were sponsored and sold by Standard Oil?

A. Yes; I did.

Q. And did you stock any lubricating oils in response to these requests?

A. Not at the station.

Q. You did stock some?

A. I had several customers who persisted in wanting Pennzoil and I stocked a certain amount of it in my basement at the house just for their needs.

Q. Now, Mr. Emerson, calling your attention to about the month of February of 1948, this year, I will ask you whether or not at that time you were carrying any tires other than the Atlas brand of tires?

Mr. Hall: May I have the question?

A. Yes, sir.

Mr. Hall: Just a minute. May I have the question read, please?

The Court: All right.

(Question read by the reporter.)

Mr. Hall: Thank you.

The Court: All right, you may answer.

A. Yes, sir; I did.

By Mr. Driscoll:

Q. And at or about that same time did you have a con- [fol. 1300] versation with anyone of the Standard Oil Company relative to that stock of tires? And just answer yes or no, Mr. Emerson.

A. Yes.

Q. Who was that representative; where did this conversation take place, and what was said?

A. The representative was Mr. Krisel and it occurred at the station. In January of this year the company came

out with consigned—consigned tires and tubes. They became plentiful enough that they could do that. Previous to that time I had had to buy tires and tubes and batteries wherever I could get them. If the company had them, I bought them from them; if they didn't have them, I bought them wherever else I could get them. And, as a result, I had four tires and several—oh, a couple of batteries left over in February of this year that I had not sold. There was two Firestone and one Goodyear and one Goodrich Silvertown.

Q. All right. Now, did you have a conversation regarding that?

A. Well, Mr. Krisel didn't like the idea of my having those competitive tires on hand and he told me to get rid of them as soon as possible.

Q. And did you thereafter secure or have delivered to you any Atlas tires?

A. Yes, sir.

[fol. 1301] Q. What were the circumstances and facts surrounding that delivery?

A. Well, this year—of course, now, they were consigned, and the only time that they were delivered was when I would make a sale of a tire and I would have to replace that tire. It was consigned stock. Last year, previous to the time that they consigned tires to me, Mr. Krisel was out to the station and we were discussing the quota of the tires—they had quotas in those days—and I had these competitive tires on hand at the time, possibly not the same ones that I had there in February of this year, but others, and the next day after his visit I received four Atlas tires C.O.D. at the station. And I was a little short on finances at the time and I called the office to see if I couldn't have those tires, couldn't accept them then and pay for them the following month, and they refused. So I sent the tires back. I didn't really need the tires. I had tires on hand but they were competitive.

Q. Now, when was the last time that you had any conversation with anyone of the Standard Oil Company relative to the products of the Standard Oil Company or those which you had at your service station?

A. The last time, you say?

Q. Yes. When was your last such conversation?

A. Well, the first part of February of this year I

[fol. 1302] called Mr. Krisel to tell him that I wanted to be released from the station.

Q. Why were you terminating your contract?

A. Well, Mr. Krisel had let me know in his various visits that the company wanted me to handle and sell Atlas products exclusively, as it had been before the shortage took place, and during this time of critical shortage period, in my buying of competitive products like batteries and tires and fan belts and spark plugs and numerous other items, I had found that I could buy from other distributors at a lower price. In other words, I made more profit by handling other products, although it was the same, for instance, Champion Spark Plugs were the same spark plug that the company handled. And I knew that, with the higher cost of operation, higher rent, that is, the higher wages that I had to pay and the—well, there just wasn't enough money in the service station business to interest me. I wanted to get out.

Q. And what was the result of that request of the company?

A. Well, Mr. Krisel told me it would possibly take two weeks to get a buyer. The fact is it took five weeks to get a buyer. He also told me that he wouldn't pick a man unless he had at least $3,000 more than the inventory value of products on hand.

Q. Now, at that time did you have any stock of mer-[fol. 1303] chandise other than the Atlas brand of tires, tubes, batteries, and miscellaneous accessories?

A. I had a large stock other than Atlas products.

Q. And did you have any conversation with Mr. Krisel or any other representative of Standard Oil relative to that stock of merchandise?

Mr. Hall: Just a minute. That is objected to as irrelevant and immaterial.

The Court: I did not quite hear the question.

(Question read by the reporter.)

The Court: That requires just an answer yes or no. That is a preliminary question. Answer yes or no, and counsel will ask you for more detail.

A. Yes.

The Court: Overruled.

A. Yes; I did.

By Mr. Driscoll:

Q. Where and at what time and who was present at that conversation?

A. That conversation took place at the station with Mr. Krisel.

Q. And what was said?

A. Just a week previous to my actually selling the station they had picked a young man by the name of Jensen that was going to buy the station——

Mr. Hall: I move to strike the answer of the witness [fol. 1304] as given thus far on the grounds that it is irrelevant and immaterial, no proper foundation laid.

The Court: That may be stricken. He is asking you for a specific conversation, so confine yourself to what you told the man. Do not give us any preamble of other things which do not concern us. Just get down to the conversation of what you told him on that particular occasion.

The Witness: Mr. Krisel told me, your Honor.

The Court: That is all right. That is part of the conversation. A conversation implies both sides, both sides participating.

A. Mr. Krisel looked over the stock of Gates belts that I had on hand. I had a large stock of Gates belts. And he said, "You will have to get rid of those Gates belts before the new owner comes in."

By Mr. Driscoll:

Q. Did he say anything further with respect to that?

A. Well, that was an order, I had to get rid of them, which I did.

Q. Now, Mr. Emerson, you testified to some quota. What do you mean by quota? Will you tell us what you mean? You got caught with some quota?

A. Quota?

Q. Yes.

A. I don't quite get your meaning there, quota.

[fol. 1305] The Court: Well, you stated you were getting products on a quota or you were getting a certain percentage.

The Witness: Oh, during rationing, you mean?

By Mr. Driscoll:

Q. Oh, you got them on quota during rationing?

A. When the tires, tubes and batteries were critically short the company used to break down the available tires, batteries, and tubes that they had, and they would divide them up between the different dealers and each one got his share of stock.

Q. At the time there was a plentiful supply of Atlas brand products on hand how were orders placed or taken or inventoried on these consignment items? How does that work?

A. The company simply sent out a consigned stock. For instance, I believe there was six 616 tires and four 650-16 tires and various sized tires, to give me a representative stock of tires and tubes to keep at the station. That was supplied to me without cost.

Q. Did they regularly send you that merchandise?

A. They did at first. When I first took the station over in 1940, tires, tubes, and batteries were consigned.

Q. How about miscellaneous items, did they regularly send you a supply of those or did you order them?

A. I had to order those.

Q. And when, finally, on what date did you leave or [fol. 1306] give up your service station?

A. I sold out March 15th in 1948.

Q. And how long had you been there at that time?

A. That was seven years and seven months.

Q. Do you recall when you first began this operation what your gallonage and your volume of business was?

A. When I took that station over in 1940 it was operated by Standard Stations, Inc. They had one man. When he took his day off the station was closed. The gallonage at that time was approximately 3,500 gallons a month. Lubrication, if I recall, it was around $18.00 a month. Accessories items was something right around $12.00 a month. It was very low.

Q. Do you know what gallonage and volume of business you did during 1947?

A. In 1947 our gallonage averaged a little better than 8,000 gallons a month on gasoline, and approximately 130 gallons of oil a month, and about $90.00 a month on lubrication, about an average of $300.00 a month on accessories sales.

Q. What, if any other, operations did you conduct in connection with this service station?

A. During the start of the war when mechanics became scarce, the Government took them into the service and it became critical to get a car worked on, being a mechanic, I [fol. 1307] had the tools and equipment there at my station that I could take care of customers' cars, which I did. And when I got into that, taking care of their cars, I gradually got to even putting in new motors, reboring motors, overhauling clutches, transmissions, relining brakes, and everything there was to do to a car.

Q. At any time did you have a conversation with any representative of the Standard Oil relative to that activity?

A. Yes, sir. It was the——

Q. Where and who was present and what was said?

A. Well, that was in about 1943. Mr. Krisel was out to the station and there was a part of the section of the ground there that——

Mr. Hall: Just a minute. I am going to object to that, if the court please, on the grounds that it is irrelevant and immaterial and not within the issues of this case.

The Court: I can't see the materiality. After all, I assume you want to show that the man objected to his doing the work, but that does not involve the use of any products. If they wanted him to devote all the time to the station and not do any detail work, that has nothing to do with any restraint we are talking about in this lawsuit.

Mr. Driscoll: He is, of course, under the contract an independent business man.

The Court: But whether they stopped him from doing [fol. 1308] work on the cars is not a violation of interstate commerce. They are going to sell him engines and things like that that he was required to buy from them.

Mr. Driscoll: Very well, your Honor.

The Court: We are not talking about restricting service. This is not a labor case. This is a sales case, a merchandising case.

All right; the objection will be sustained.

I think the examination of this witness is so extensive we had better break the continuity here so long as we are stopping, and have a short recess.

(Short recess.)

[fol. 1309] The Court: Proceed, gentlemen.

Mr. Driscoll: If your Honor please, the government moves for the admission of Exhibit 90, for identification, and Exhibit 91.

Mr. Hall: Defendants object to each and all of the documents so offered on the ground they are irrelevant and immaterial.

The Court: Are those the same as the others that we have had under consideration?

Mr. Driscoll: Yes. Exhibit 90 is a distributor agreement and Exhibit 91 a dealer agreement.

The Court: All right. The objection will be overruled.

The Clerk: 90 and 91 in evidence.

The Court: The witness will resume the stand.

Mr. Driscoll: You may examine, Mr. Hall.

Cross examination.

By Mr. Hall:

Q. What is your present business or occupation, Mr. Emerson?

A. Why, I have a little business started selling Wax-seal polish.

Q. What kind of wax? What is the trade name of the wax or polish?

A. Wax-seal.

[fol. 1310] The Court: Is that an automotive polish?

The Witness: It is both, automobile and home, furniture.

By Mr. Hall:

Q. Do you have a distributorship for that product?

A. I have, in San Francisco and the Bay area.

Q. What counties does it cover?

A. San Francisco, San Mateo, Santa Clara, Santa Cruz, and they just gave me Alameda County.

Q. You left the operation of this Chevron station to take up that distributorship, didn't you?

A. That's right.

Mr. Hall: That is all.

The Court: All right. Step down. Call your next witness.

Mr. Hall: Would your Honor entertain a motion to adjourn at this time if I made the representation that I will be particularly docile and expeditious this afternoon?

The Court: I think so. You did very well this morning. If I had known how limited you were going to be, I would not have taken a recess. So long as you have shortened the cross examination and limited it to only one question, I can't very well deny you that request for the additional time.

We will take the usual recess until 2:00 o'clock.

(Whereupon at 12:00 o'clock noon a recess was taken until 2:00 p.m.)

[fol. 1311] Los Angeles, California,
Wednesday, May 19, 1948, 2:00 p.m.

The Court: Proceed, gentlemen.

Mr. Driscoll: The Government will call Mr. Walter Bretthauer.

WALTER V. BRETTHAUER, called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Walter V. Bretthauer.

The Clerk: Now, just a moment. Walter V.?

The Witness: V.

The Clerk: How do you spell your last name?

The Witness: B-r-e-t-t-h-a-u-e-r. 235 Caliente Street, Reno, Nevada.

Direct examination.

By Mr. Driscoll:

Q. Where do you live, Mr. Bretthauer?

A. Reno, Nevada.

Q. And what is your occupation?

A. Service station operator.

Q. Now, if you will just speak up clearly so that counsel and the court and all of us can hear you?

A. Service Station operator.

Q. What brand of petroleum products and lubricating [fol. 1312] oils do you have?

A. Standard.

Q. How long have you been operating a station selling the Standard Oil products?

A. Going on my fifth year.

Mr. Driscoll: The Government will ask to have marked for identification documents purporting to be a sublease, distributor agreement, inventory of equipment, and a confirmatory letter, all dated April 12, 1944, between the Standard Oil of California and Walter Bretthauer.

The Clerk: Government Exhibit 92 marked for identification.

By Mr. Driscoll:

Q. When you began operating the station as a dealer for the Standard Oil Company did you enter into a contract with them?

A. I did.

Q. I hand you some documents headed "Sublease" and "Distributor Agreement" and "Inventory," and a letter over the heading of the "Standard Stations, Inc." which have been marked Exhibit 92 for identification, and ask you if this is the contract you refer to in your testimony?

A. Yes.

Q. Are you operating under that specific contract at the present time?

A. No, sir.

[Vol. 1313] When did you change or what did you change? What occurred?

A. Well, I negotiated another contract about approximately a year ago last February.

Mr. Driscoll: The Government will ask to have marked for identification the documents produced by the defendants Standard under Paragraph I, subpoena 2, item 78.

The Clerk: Government's Exhibit 93 marked for identification.

By Mr. Driscoll:

Q. At the time that you first took over and operated the service station for the Standard Oil Company did you have any interview or conversations with any representative of Standard?

A. Yes.

Q. And with whom, if you recall, and where and when?

A. You mean in my first contract?

Q. Yes.

A. Oh, I negotiated that with Richard Pickett. He was superintendent of the Incorporated Stations at that time.

Q. Did you have an interview with him?

A. Yes; for the station.

Q. Where?

A. The interview was for the station. That is so long ago, I think it was in their training station.

Q. Was anyone else present?

[fol. 1314] A. Not that I remember.

Q. State what the conversation was.

A. Well, I was trying to negotiate a contract with him on a cent a gallon or a half a cent at that time, but he wanted a cent and a half, and we settled it by a cent a gallon.

Q. After you had been successful in negotiating the contract did you have any further conversations with him relative to its operation?

A. Well, I can't recall. We had quite a few conversations. I can't recall any pertaining to my operation.

Q. At the time that you began operation of the station under the first contract, Government's Exhibit 92, what tires, batteries, tubes, and automotive accessories were you handling?

A. A Standard line.

Q. And did that include miscellaneous accessories as well as the tires, tubes, and batteries?

A. Yes; I think so, because I bought outside, but all I could order was Standard. I did, I stayed with the sponsors.

Q. Did you continue to purchase the full line from them?

A. No.

Q. What occurred?

[fol. 1315] A. Well, they couldn't supply me and I asked permission to go on the outside so I could stay in business, otherwise I could have never operated.

[fol. 1316] Q. At the time that you entered into the second agreement with them, Government's Exhibit for identification 93, did you have at that time an interview with any representative of the Standard Oil Company?

A. Yes.

Q. Where did that interview occur, and who was present then?

A. Well, I was asked for an increase in rental of a half a cent, which I wouldn't grant, due to the fact that they could not supply me, and the supply houses around there were keeping me in business, and I felt that Standard wasn't justified in getting an increase in rent.

Q. What did the representatives do, if anything, with respect to that?

A. Well, they asked me several times, and one afternoon the representative came to me and said, "Walter,"——

Mr. Hall: Pardon me. May we have the name of the representative?

The Witness: The representative's name?

Mr. Hall: Yes.

The Witness: Mr. Mortenson.

By Mr. Driscoll:

Q. Continue.

A. Could I have the question again?

(The question and answer were read.)

A. "—I don't think it is fair to the Standard Oil [fol. 1317] Company, and I am afraid you will have to grant the half a cent," I thought it over, and I agreed. I granted the half cent.

Q. The outcome of that conversation and discussion was your present agreement?

A. No. Well, before this agreement—no, at the end of the month they billed me, instead of the one and a half cent, they charged me on the tank wagon, they billed me a minimum and a maximum, and billed me the difference, in which case I canceled out.

Q. Then did you have any further negotiations?

A. Yes. The representative of Standard, I think it was in Sacramento, Mr. Haines, told me that he felt that I didn't really want to cancel out, and that he would send up a man that would negotiate an agreement, a rental agreement, that would be satisfactory to me and the Standard Oil Company.

Q. What resulted from those negotiations?

A. I took the agreement. I signed the contract.

Q. Now, during the time that you have operated this station under either agreement, have you had customers who requested of you petroleum products, tires, tubes and

batteries, and miscellaneous accessories, other than and of different brands than those which are sponsored and distributed and sold by Standard Oil?

[fol. 1318] A. Yes.

Q. Were you able to comply with their request? Did you supply them?

A. Well, I have always tried to sell them my sponsor's products, but if I couldn't, I would go down and buy the tire, whatever competitive tire it was, and put it on. I wouldn't lose the sale.

Q. Have you ever stocked the different merchandise?

A. Only batteries, with permission.

Q. How would you supply these requests?

A. Well, I never stocked it. As they requested them, I would get in the car, get the tires and bring them up, and put them on. I never stocked them.

Q. Now, at any time have you had any conversations with a representative of the Standard Oil relative to your stocking or supplying tires, tubes and batteries, or miscellaneous accessories, other than or different than those that are sponsored and sold and distributed by Standard Oil?

A. Well, they haven't come to me. They know I live close to the Standard's contract, but the conversation—Mr. Mortenson said they had a meeting and in this meeting he said that some of the boys were probably going to be canceled out if they didn't get rid of their competitive line. In answer to that, I said, "They won't have to worry about me, because you people have never supplied me."

[fol. 1319] Q. Was anything further said?

A. Oh, he said, "No," he said, "absolutely. You are a good operator."

Q. Since that date have you stocked any merchandise of any kind other than that which is sponsored by Standard Oil?

A. As to miscellaneous stock, yes; that is radiator seal, and a few items like Casi*de*.

Q. Are those items which are distributed or sold under the Atlas brand?

A. No.

Mr. Driscoll: You may examine. Oh, excuse me.

The government will move admission of Exhibits 92 and 93, for identification.

Mr. Hall: The defendant objects to each and all of the documents so offered on the ground they are irrelevant and immaterial.

The Court: I will look at one set and see if they are the same. These are of the type which have heretofore been introduced?

Mr. Driscoll: They are, your Honor.

The Court: I haven't looked at a set lately. I thought I had better check up to see if any variance has been introduced. The objection is overruled and the documents will be received and marked Exhibits 92 and 93.

The Clerk: 92 and 93 in evidence.

[fol. 1320] Cross examination.

By Mr. Hall:

Q. As I get the story, Mr. Bretthauer, we started out with a contract or with a sublease which on its face provided for a rental of a cent and a half?

A. Yes.

Q. But with a letter——

A. A rider, yes.

Q. With a letter which said that until June 23, 1944, the company would accept one cent per gallon instead of a cent and a half; is that a correct statement of what occurred?

A. Yes, it was, until when we made a new lease.

Q. A little louder.

Mr. Driscoll: Will you speak louder, please?

The Witness: Up to 1944.

By Mr. Hall:

Q. I was reading the document which is a part of Exhibit 92——

A. Yes.

Q. ——which is a letter dated April 12, 1944 to you from somebody connected with Standard Oil Company.

A. Yes, that's right.

Q. Is that right?

A. Yes.

Q. I have stated it correctly, have I?

[fol. 1321] A. Yes, you have.

Q. Now, after June 23, 1944 did you continue to pay rental at the rate of a cent a gallon?

A. A cent a gallon, yes.

Q. Then they wanted, as I understand your testimony, to raise the rent to a cent and a half, and you didn't like that?

A. I didn't accept that, as they weren't supplying me.

Q. Yes. Now, as a result of that effort on their part to raise the rent and your objection to the raising of the rent, we come along to a new contract, which is exhibited by Exhibit 93; is that correct?

A. That's right.

Q. Now, up to the time that Exhibit 93 was executed, had you been paying only a cent a gallon rental?

A. That's right.

Q. I notice under Exhibit 93 there is a sublease dated March 13, 1947 which calls for a rental of $169.25 a month.

A. That's right, plus $6.75 for the sign or their advertising, which makes it $175 total.

Q. Yes, plus $6 and——

A. ——75 cents.

Q. Right. You are perfectly happy about your arrangements with Standard Oil Company, are you?

A. I signed an agreement.

[fol. 1322] Q. Well, are you happy about it?

A. Yes, I guess so.

Q. Now, this station was a Standard Oil station before it was subleased to you in the first place, wasn't it?

A. No, I don't think it was operated by Standard, Incorporated.

Q. Well, let's take the time when the first sublease to you was made. It is a fair statement, isn't it, that at that time it was Standard Oil's property, either owned or leased by Standard Oil?

A. Leased by Standard Oil, yes.

Q. So that you never had any interest in the real estate except as a subleasee from Standard; isn't that right?

A. That's right.

Q. Now, counsel, in referring to a period I believe before you had this dispute as to the rental, asked you whether you handled products competing with Standard Oil products, and I understood your testimony to be that you asked

Standard's permission to go on the outside and purchase certain things. Am I correct in that?

A. That's right.

Q. Did they give you that permission?

A. They did.

Q. Now, what are the products that you have handled or the accessories that you have handled that weren't a part [fol. 1323] of the Standard Oil line?

A. Well, Prestone, chains.

Q. Well, how about batteries? Did you say you stocked some other batteries?

A. Well, last winter I was informed that the batteries would be short, and I asked my sales manager if it would be all right for me to order some from the Nevada Auto Supply, so that I wouldn't be short. He said yes, so long as they are on the allocation, he said, it would be all right.

Q. I think you said you did buy competitive tires when you had a demand for competitive tires from some particular customer.

A. That is, if you would like to have it and wouldn't want the Atlas, and you were sold on a Firestone tire, before I would lose the sale, or if I couldn't convert you to an Atlas tire, I would certainly go and get them. I mean, that's money in my pocket, and that's what I am after.

[fol. 1324] Q. You made every effort to sell them an Atlas tire, didn't you?

A. Oh, always. I stayed with my subject.

Mr. Hall: That is all.

Mr. Driscoll: Now, one or two more questions, if the court please.

Redirect examination.

By Mr. Driscoll:

Q. Mr. Bretthauer, this permission that you testified in response to counsel's question which was extended to you, was that to all items or only to items that Standard was unable to supply you?

Mr. Hall: I submit, if the court please, that the witness has already testified as to the permission.

The Court: Yes. It is not proper redirect. He has testified to conversations he had.

Mr. Driscoll: That will be all.

The Court: All right; step down. Call your next witness.

Mr. Thody: The Government calls Mr. Ralph A. Bryan.

RALPH A. BRYAN, called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Ralph A. Bryan, B-r-y-a-n.

[fol. 1325] The Clerk: Ralph A. Bryan, B-r-y-a-n. Thank you.

Direct examination.

By Mr. Thody:

Q. Where do you reside, Mr. Bryan?

A. 425 Broadway, Santa Monica.

Q. And what is your occupation?

A. Service station operator.

Q. And what products do you sell in this service station?

A. Standard products.

Q. Do you have any written understandings with the Standard Oil Company concerning the operation of this service station?

A. Yes.

Q. I hand you at this time, Mr. Bryan, a document entitled "Dealer Agreement TBA," dated December 12, 1945; and a document entitled "Mutual Termination Agreement," dated December 12, 1947; and a document entitled "Adjustment Dealer Rental," dated March 2nd, 1948; and ask you with respect to each of these documents do they contain your signature?

A. They do.

Q. Do these represent agreements which have been entered into between you and the Standard Oil Company of California?

[fol. 1326] A. Yes, sir.

Mr. Thody: At this time, your Honor, I ask to have marked as Government's Exhibit for identification the agreements referred to by Mr. Bryan.

The Clerk: Government's 94 marked for identification.

By Mr. Thody:

Q. How long have you operated this station, Mr. Bryan?

Mr. Hall: Will you pardon me a minute while I look at these, Mr. Thody?

Mr. Thody: Yes.

Mr. Hall: Suspend for just a moment.

By Mr. Thody:

Q. How long have you operated this station, Mr. Bryan?

A. Under my own management or, rather, for myself, since the 1st of March, 1943.

Q. Did you have any previous affiliation with this station?

A. I worked in the station approximately a year prior to that time as manager for the former operator.

Q. Did you have any previous agreement prior to the agreement which I have just shown to you?

A. There was a letter of assignment of the former operator's lease to me in March of '43, at the time that I took the station over.

Q. Do you have a copy of that agreement?

A. I believe I still have it in my files but I can't [fol. 1327] say positively, because this agreement I considered as replacing the former assignment.

Q. Under that previous agreement were you selling the same type of products that you were selling under this present agreement?

A. Yes.

Q. Were you selling tires, tubes, and batteries?

A. Yes.

Q. Were you selling miscellaneous automotive accessories?

A. Yes.

Q. Under your present agreement, Mr. Bryan, do you now sell oils and greases?

A. Yes.

Q. What brands of oils and greases do you sell?

A. Standard products.

Q. Do you handle at the present time any competitive oils, any other oils other than carrying the brand name of Standard Oil?

A. Not at the present time.

Q. Have you in the past handled other oils than those manufactured or produced by Standard Oil?

A. Yes.

Q. What other brands of other oils have you handled?

A. I for a time handled some Macmillan Ring-Free and [fol. 1328] some Conoco Mph.

Mr. Hall: Pardon me. What was that last name?

Mr. Thody: Conoco Mph.

The Witness: Mph.

By Mr. Thody:

Q. Have you had since the operation of this station customers who have asked for lubricating oils other than Standard Oil lubricating products?

A. Yes, sir.

Q. When have you had such customer preferences or requests?

A. A short time prior to buying and stocking in limited quantity these two particular brands of oil.

Q. And approximately when did you first stock the oils you have referred to?

A. Probably about two years ago.

Q. Where have you kept this oil?

A. In the storeroom off of the lube rack.

Q. And where is that located with reference to your principal office or with reference to the location of your pumps?

A. Well, the pumps and the office is on the front of the premises. The lube rack is on the very back of the premises.

Q. Have you sold much or did you sell much of this Ring-Free oil and this Conoco Mph?

[fol. 1329] A. Not by ratio to the total gallons of oil sold; no.

Q. To whom did you sell this oil?

A. Well, I had possibly 10 or 12 customers who were buying their gasoline from me, and I couldn't get their lubrication and oil change business because I was not able to supply the oil that they requested; so I stocked this oil to be able to get their other lube business, and only for that use.

Q. And did you or not stock this especially for those customers?

A. That is right; expressly for those customers.

Q. These customers, what type of customers were they Were they commercial accounts or were they private parties?

A. Private parties with privately owned passenger cars, better quality cars.

Q. What type of cars?

A. Cadillacs, Buicks.

Q. With the exception of these special customers you have referred to, have you ever had or did you at that time have other customers who might drive into your station and ask for special brands of lubricating oils?

A. Oh, yes; we always have that in a station over the gas islands. There is naturally brand preferences on the part of transient customers.

Q. At the time you stocked this Conoco Mph oil and [fol. 1330] this Macmillan Ring-Free would you have customer preferences asking for Macmillan products or Conoco products?

A. I have had them ask for it; yes.

Q. At the same time you were storing such products in your station?

A. Yes, sir.

Q. With reference to these customers, Mr. Byran, when an oil preference had been placed upon you did you satisfy their requests?

A. No, sir.

Q. What would occur in such circumstances as that?

A. I informed them that we stocked Standard RPM and Standard Penn and I was able to supply, and that they were of a good quality, and that was all that I was able to supply them.

Q. Were you successful or unsuccessful in selling your Standard Oil to such customers?

A. Probably where they stated a definite preference I did lose some sales. In other words, I was not able to convert them to the brand of oil that I had if they had a set preference for some other brand of oil.

Q. In those instances where you were unable to convert them did you mention the fact that you had Macmillan Ring-Free oil or Conoco Mph oil in your own stock?

A. I did not, sir.

[fol. 1331] Q. Have you ever discussed the matter of your handling competitive oils, or did you discuss the mat-

ter of your handling competitive oils with any representative of the Standard Oil Company?

A. I think there was a discussion on one instance at least.

Q. When was that, if you recall?

A. I believe about October of 1947.

Q. Who was the representative of the Standard Oil Company that you had this discussion with?

A. Mr. Monroe, the merchandiser.

Q. Was he the merchandiser that calls upon you regularly?

A. Yes.

Q. Who was present during this discussion?

A. No one in the immediate vicinity. I mean my employees were possibly near, but they do not enter into conversations between I and representatives of Standard. They have their work to do.

Q. Where did this discussion occur?

A. In the lube room, in the store behind the lube room.

Q. And what was said during this discussion?

A. Well, Mr. Monroe asked me if I stocked that oil regularly and I said, "In a limited quantity to satisfy special customers." He asked if the people supplying me that oil [fol. 1332] would build a station for the sale of it for me. I told him I hardly thought so.

Q. How did Mr. Monroe find out about this oil?

A. In inspecting the premises, checking over conditions.

Q. And do you now sell either Conoco Mph or Macmillan Ring-Free oil?

A. No, sir.

Q. With reference to your station do you sell automobile tires and tubes?

A. Yes, sir.

Q. What brand of automobile tires and tubes do you now sell?

A. Atlas.

Q. Do you purchase any other outside brands of tires or tubes?

A. At the present time, no, sir.

Q. Have you in the past purchased any outside brands of tires and tubes?

A. Oh, yes, sir.

Q. What brands have you purchased and when did you purchase them?

A. Oh, during the period of critical shortage and allocation of tires, I bought U. S. Royals, I bought Firestones, Dunlop, Kelly-Springfield—any make that I could get to supply a customer demand.

[fol. 1333] Q. Approximately what period of time were such purchases made with reference to the year?

A. Starting year and ending year?

Q. Well——

A. I would say over a period of two years or longer during rationing of tires, particularly.

Q. During that period of time were you able to procure your needs from the Standard Oil of California?

A. No.

Q. Do you happen to have any brand of outside tires in stock at the present time?

A. I think I have one.

Q. What is it?

A. One Dunlop in a 21-inch tire for an old model Ford.

Q. And when did you purchase that?

A. Almost a year ago.

Q. At the time you purchased this were you able to procure comparable merchandise from Atlas?

A. Not at that time, and it was on a customer order. I checked with the warehouse and they didn't have the size in stock, and I was able to get two. Then the customer didn't come back and get them, so I have one left.

Q. Do you have any outside tubes?

A. Very few, possibly less than half a dozen.

[fol. 1334] Q. In what brand?

A. U. S. Royals.

Q. And when did you purchase those?

A. About the same time.

Q. At that time were you able to purchase your requirements of tubes from the Atlas?

A. No. I believe tubes were still on allocation at that time; in fact, I know they were.

Q. And when you speak of "allocation" what do you mean, Mr. Bryan?

A. Well, during this period of shortage on tires and tubes, each month we received a notice, what they called a "Notice of Allocation" from the El Segundo office, grant-

ing, or, rather, giving us the privilege to buy from the warehouse a certain number of tires and tubes of a stated size that they stated in the letter. In other words, they had so many of such and such a size and they allocated or attempted to, evenly amongst all the dealers. And then when we received that letter the first of the month, allocating so many tires and tubes, we could send in a purchase order from them, or, rather, not a purchase order but a tire and tube order to the warehouse and they were shipped to us.

Q. Would that be in the form of an availability list, a limited availability list?

A. Yes; that could be what an allocation would be [fol. 1335] called. I mean the way I understand it.

Q. At the present time, with respect to your obtaining the Atlas tires and tubes do you obtain these tires and tubes on a consignment basis or do you purchase them?

A. You say at the present time?

Q. At the present time.

A. At the present time my entire stock of tires and tubes, Atlas tires and tubes, are consigned.

Q. Have you always obtained your requirements of tires and tubes on a consignment basis?

A. No, sir.

Q. When did you obtain them otherwise than by consignment?

A. Well, prior to March of this year, that is going back. In other words, I changed over to a straight consigned stock in March. For about six months prior to that time I had part of my stock of tires and tubes on consigned, and part I owned, had bought outright.

Q. Now, you have referred to this change that occurred in March of this year. Does that represent your present arrangement for obtaining tires and tubes on consignment?

A. Yes.

[fol. 1336] Q. Could you describe how that method of operation was worked out?

A. Well, at that time, as I say, part of my stock was consigned and part was owned, and they came—the Standard representative came in and said they were able to consign my requirements of tires, if I so desired it, and due to simplicity of bookkeeping, I would rather have it all consigned or all owned. So I agreed to an entire consignment of them, and so they took an inventory of the

tires owned, issued a credit memo to me for the tires I owned, left it in the stock, and increased my consignment to cover my entire stock of tires and tubes.

Q. In your present operation, when you sell a tire do you immediately place an order for a replacement?

A. We are supposed to send an order immediately on the sale of a tire.

Q. Is that in accordance with your previous arrangement with the Standard Oil Company?

A. When I owned the stock?

Q. No, with reference to the plan worked out in March of this year, after you have sold a tire do you immediately place an order for a replacement?

A. Yes.

Q. Now, have you had any discussion at any time, Mr. Bryan, with reference to the risk of loss on these tires, as [fol. 1337] to the party who would bear the risk of loss?

A. Yes.

Q. And with whom did you have such discussion?

A. I believe that that was with Mr. Lackey some time ago.

Q. Do you recall approximately when?

A. Approximately, yes. It was after the reissuance of credit cards. I mean that would be after the relaxation of the government controls on credit, which evidently was some time in '45.

Q. Who was present during your discussion with Mr. Lackey?

A. I think only Lackey and myself.

Q. What was said with reference to this risk of loss?

Mr. Hall: Objected to as hearsay.

The Court: Overruled.

By Mr. Thody:

Q. You may testify.

A. May I have the question again, please?

Q. Will you read the question, please?

(The question was read.)

A. Oh, that the responsibility for the care of the tires; in other words, if tires were stolen, it was my responsibility as though it was an owned stock. I mean, they are in my charge.

Q. Now, when you make a sale of tires, what is normally [fol. 1338] done by you with the proceeds, the money which you have obtained from such sale?

A. Oh, it is handled in the regular manner, just as though it was a sale of gas, or anything else. It is run through the register as a sale, and then when I reorder the tire is paid for by check. In other words, I run it through my sales records and pay by check.

Q. In the conversation you referred to with Mr. Lackey, was there any discussion concerning the risk of loss on the proceeds of these tire sales?

A. No, the discussion was—I mean, the discussion of the risk of loss on the consigned stock was brought about by a conversation with reference to something else in connection with money belonging to Standard Oil Company. In other words, prior to the war, when we had credit cards for the short time that I operated for Dailey, we accepted payments from the public on Standard Oil credit card accounts and turned them in to the company. And then I was a little green, and I never even considered the risk of the handling of that money, so I didn't bring any question up on it until after the war when credit cards were again installed and people came in and wanted to pay on their account. Then I wondered who was responsible for that money, because service stations are not able to buy adequate insurance to protect even their own small office [fol. 1339] cash because of the prohibitive cost, and I asked that question first, and I was told that since I wasn't bonded or wasn't insured I should not accept credit card payments. And I also asked them about the responsibility of consigned stock.

Q. Now, do you presently sell batteries?

A. Yes, sir.

Q. From whom do you procure your supply of batteries?

A. From Standard, Atlas batteries.

Q. Do you obtain any outside batteries?

A. Not at the present time, sir.

Q. Have you in the past?

A. In the past I have, sir.

Q. From whom have you obtained such batteries and what brand batteries were they?

A. Oh, I purchased Willards from a local jobber, Bruner & Miller, and I purchased Hobbs from another local jobber,

Ackdahl Auto Parts.' Then during the extreme shortage a couple of years ago I bought batteries in L. A., and any quantity or size I could get, wherever I could get them. I have handled probably four or five different brands of batteries.

Q. With reference to your obtaining batteries at that time, did you have to go out and solicit the source of the batteries yourself?

A. Oh, yes I had to hunt for them.

[fol. 1340] Q. At that time was Standard Oil able to supply your requirements of batteries?

A. Not at that time, no. I tried to get them from them first.

Q. But at the present time you handle Standard Oil or Atlas batteries exclusively; is that correct?

A. That's right.

Q. Now, you also sell at your station items known as miscellaneous accessories?

A. Yes, sir, I have quite a heavy stock of them.

Q. What does your heavy stock consist of?

A. Well, radiator supplies, fan belts, polishes. Then I have some, oh, fuel pumps, brake linings.

Q. Have you ever had any discussions with any representative of the Standard Oil Company with reference to your purchasing these miscellaneous accessories,—the purchasing of your requirements of miscellaneous accessories?

A. I believe there has been discussion. In fact, I know there has been a discussion several times on it.

Q. Well, with whom?

A. I discussed it with Mr. Monroe.

Q. Is this the same Mr. Monroe you mentioned previously in your testimony as the local merchandiser who calls around at your station?

A. Yes, sir.

[fol. 1341] Q. When did you have discussions with Mr. Monroe concerning your purchasing of your requirements of automotive accessories?

A. At the time that he would come in on inspection trips to the station or to check consignment stocks.

Q. And how often was that?

A. I would say about once a month; maybe not quite that often; once a month to six weeks.

Q. Well, every time he has come around have you had discussions?

A. Oh, if I have had items that weren't there the last time—I mean all my accessories are displayed in the office, and if there were new items there, it was of interest to him. I mean, if it was an item that was unusual, he would ask where I purchased it.

Q. Are you acquainted with the Standard Oil's program which has been cominonly designated in this law suit as the Bonus-for-Volume program?

A. Yes, sir.

Q. And what is meant by that designation?

A. We get a statement each month from the company showing the volume of accessories purchased from them, and once a year there are brackets that we get an additional, or, rather, get a commission or an additional bonus above the original purchase price—above the original dis-
[fol. 1342] count on the products.

Q. These brackets that you refer to, is that a graduated discount scale?

A. That's right, based on the volume of purchases of accessories, and tires, tubes and batteries.

Q. Have you received such discount checks in accordance with that program?

A. Yes.

Q. Do you recall in what years you received such discounts?

A. Oh, I am quite sure I received it each year that I was there.

Q. Have the discounts that you have received on this Bonus-for-Volume program remained more or less constant through the years?

A. My volume——

Q. No, not your volume. Has the program, has there been any change at any time with reference to the discount rates?

A. Oh, yes.

Q. When were such changes inaugurated?

A. In June of last year; June of '47.

Q. Preceding this change in June of last year, that you refer to, was there anything in the volume of merchandise, miscellaneous accessory merchandise, which you were sell-
[fol. 1343] ing through your station?

A. Yes, sir.

Q. Did you ever have any discussions concerning the discrepancy in the volume under the changes which occurred in June, 1947, and the volume that you had previously enjoyed in your station with any representative of Standard Oil?

Mr. Hall: Just a minute. I would like to have the question read, please.

(The question was read.)

Mr. Hall: Objected to as unintelligible.

Mr. Thody: Can the witness answer it?

The Court: That is a preliminary question that should be answered "Yes" or "No," and then he will ask you the details. Can you answer it? Mr. Hall thinks it is unintelligible. Do you understand it?

The Witness: I believe I do, sir.

The Court: What would your answer be?

The Witness: My answer would be there was a conversation regarding it.

The Court: That is enough. Now, go ahead.

By Mr. Thody:

Q. When did that conversation take place, with whom, and who was present?

A. About three or four months after the change in the Bonus-for-Volume. That would make it about September [fol. 1344] or October of 1947.

Q. With whom was the conversation?

A. With Mr. Monroe.

Q. And who was present?

A. I believe in the office where we had this conversation there was only Monroe and I.

Q. What was said by Mr. Monroe with reference to your change in the volume you were buying of discount-for-volume items?

A. Well, I had our records there of some kind, comparable records by months with that year, against previous years, and he commented that there had been an appreciable drop in my purchases particularly of spark plugs.

Q. What did he say about your purchases of spark plugs?

A. Well, he asked me if I was buying spark plugs from somebody else, Champion spark plugs.

Q. What did you tell him?

A. I told him no, that I had discontinued pressing the sale of spark plugs. I previously had done quite a large volume, I had enjoyed a large volume of sales of spark plugs because it would affect my bonus rate.

Q. Was there anything further said with reference to any other type of accessories?

A. Well, all of my accessory purchases had dropped considerably.

[fol. 1345] Q. Did you make any explanation to Mr. Monroe at this time, giving the reasons for that drop?

A. Other than the fact I kind of laughed and kidded him and said I couldn't make as near the maximum bonus bracket as I had the previous year because of the raise in the requirement of purchases.

Q. What change had taken place with reference to that?

A. Well, in 1946 the maximum bonus could be obtained by a dealer if he bought $10,000 worth of accessories, that is, tires, tubes and batteries, and miscellaneous accessories, and after June of '47 the requirements to make a 15 per cent bonus was $75,000 of purchases which, in my opinion, was pretty much out of reach of the average service station.

Q. Now, have you ever had any conversations with any other representatives of Standard Oil, other than Mr. Monroe, concerning your purchases of miscellaneous accessories within, say, the last year?

A. I think there was a conversation with Mr. Bilger and Mr. DeWitt along in March of this year.

Q. And where was this conversation?

A. In the office of my station.

Q. Who is the Mr. Bilger that you referred to?

A. I believe Mr. Bilger's title is assistant to the district manager at Long Beach, Mr. Furr's assistant.

Q. Does he have anything to do with Chevron stations?

[fol. 1346] A. Oh, yes.

Q. In what capacity?

A. Well, it was then—he has apparently a lot to do with the leasing.

Q. Who is this Mr. DeWitt you referred to?

A. Mr. DeWitt is the branch manager at El Segundo.

Q. What was said now in this conversation that you had with these two gentlemen?

A. Oh, I had a display cabinet, a metal—a very attractive metal display cabinet of Whiz products on rollers in the middle of the floor, and they asked me whether I had to buy the cabinet or whether it was supplied with the products, and I told them it was a part of a package deal, and I said that Whiz carries quite a line of accessories, or, rather, polishes and such, and I said that I had tried to stock only their items in the Whiz line that were not competitive to the items carried in the Atlas line. I mean there was no argument. It was just conversation. But there were a number of items I had on the rack that it was pointed out Atlas did supply.

Q. Who pointed those out?

A. I think——

Q. Did you point them out to Mr. Bilger?

A. No, they were pointed out to me.

Q. Do you recall whether it was by Mr. Bilger or Mr. [fol. 1347] DeWitt?

A. I think it was Mr. Bilger, but I can't be sure.

Q. What was said with reference to each one of these items that was pointed out?

A. Well, I had a Whiz Venus polish, and he said, "We have an Atlas polish." And I had a Whiz hydraulic brake fluid, and he said, "We have an Atlas hydraulic brake fluid." And I had a London Whiz finish, a car finish polish, and they said, "We handle Maxite and a simonizer through an Atlas supplier." I mean they were just comparing the products and that there were products of a like nature in the Atlas line.

Q. Since that time have you ordered any merchandise to replace that rack?

A. In the Whiz line?

Q. Yes.

A. No, sir.

Mr. Thody: That is all.

The Court: Cross-examine.

Mr. Thody: Just one moment. If I may, your Honor, I would like to move at this time to have Government's Exhibit 94, for identification, admitted into evidence.

Mr. Hall: Objected to as irrelevant and immaterial. My objection runs to each of the documents so offered.

The Court: Is this a TBA contract, and so forth?

[fol. 1348] Mr. Thody: Yes, your Honor.

The Court: All right. The objection is overruled.

The Clerk: 94 in evidence.

The Court: Gentlemen, this has occurred to me, that we are making a very voluminous record unnecessarily. While I realize that as to each of these contracts we have to have the particular form used because the typewritten matter differs, but it seems to me it is not necessary to introduce every time the Atlas catalogue, because you are introducing a large number of exhibits which have this catalogue attached to them, and the problem in any record to be prepared on this case is going to be; what to do about that. They are supposed to be transcribed in any record on any appeal to be taken in this case, and I anticipate this is the type of case which is not going to stop with the District Court. You are going to have difficulty in getting the record made up unless you secure permission from me and from the higher court to send up the physical records. I was wondering whether it couldn't be stipulated as to these exhibits that there was attached to each of these exhibits the catalogue as of a particular date, a catalogue which you have already in the record.

Mr. Hall: That would be perfectly agreeable to me, your Honor. I think the stipulation should refer to each exhibit, where it occurs.

[fol. 1349] The Court: Yes, I understand that.

Mr. Hall: And to each document.

The Court: Counsel can offer it and merely say that attached to it is the catalogue of such-and-such a date and that permission is asked that it be withdrawn, as it is already in the record with other exhibits.

Mr. Hall: That is very satisfactory to me.

Mr. Dixon: I might say, your Honor, that the government has the same view and has in mind if, as and when that time occurs that counsel for the government and for the defendants, undoubtedly with the approval of the court, enter into a stipulation covering these exhibits which simply indicates that unless there is some change in the language of a particular exhibit, that the type of exhibit involved there was of a type comparable or substantially the same as Government's Exhibits 1 through 5, inclusive.

The Court: I thought that we might do it chemin ferant, as the French say, rather than to have it by a blanket stipulation.

Mr. Dixon: I might say, your Honor, I think we are approaching the end, in any event.

The Court: I fear that that is happening. I wouldn't say I am glad or sad, or anything like that. I just say I fear it is happening. I perhaps should have thought about it before, but you know that I haven't looked at any of these [fol. 1350] lately on the assumption that they are of a similar character. But today I have again been looking at them and I notice that we are putting in time and time again the same exhibit, which serves no purpose.

Mr. Dixon: I quite agree with your Honor.

The Court: Except to make folios for the reporters and for the printers.

Mr. Dixon: There is quite a lot of duplication, yes.

The Court: And while it is legitimate to make folios for the reporters, we do not want to make them unnecessarily.

Mr. Dixon: I think we can work it out along the line of your Honor's suggestion, with your approval.

The Court: All right. I will not have the time taken to have them torn out now, but later you can cover it by stipulation. You can go through the exhibits and see which is a duplicate of something else. For instance, this I notice is a current one, bears the date January 1, 1948, and there may be others which are older which may be of a different character. Proceed.

Cross-examination.

By Mr. Hall:

Q. Are you still operating this station, Mr. Bryan?

A. Yes, sir.

Q. The reason I ask is that in Exhibit 94 is a document [fol. 1351] which seems to be a termination by mutual consent of some dealer agreement. Was that a different agreement than this?

A. That was that agreement, sir.

Q. Well, is it your testimony that this termination never became effective?

A. It has been superseded by a verbal agreement, sir,

that I am to continue the operation of the station beyond July the 1st on the old automatically renewable contract.

Q. I see. Now, the document that starts this dealership so far as you are concerned, referring again to Plaintiff's Exhibit 94, is a dealer agreement TBA, dated December 12, 1945; is that correct?

A. That is the one that is in effect now, yes, sir, but I operated this station previous to that day.

Q. Oh, yes.

A. From March 1, 1943, and I had——

Q. Well, let me ask you this: At the time you entered into this dealer agreement TBA, on or about December 12, 1945, you did so of your own free will, didn't you?

A. Oh, yes, sir.

Q. You wanted at that time to deal in Atlas tires, tubes and batteries, didn't you?

A. That's right, yes, sir.

Q. You still do, as a matter of fact, don't you?

A. Yes, sir, surely.

[fol. 1352] Q. You knew, did you not, that you could have taken what is called the plain dealer agreement, which contained no obligation with reference to tires, tubes and batteries, didn't you?

A. No, I didn't know that, sir.

Q. You didn't?

A. No, sir.

Q. Now, has there been any time, and I am speaking of the period from December 12, 1945 up to the present time, when you have felt that you didn't want to handle Atlas tires, tubes and batteries?

A. No, I prefer to handle them when I can get them.

The Court: While there is no objection made to the question, I want to propound an inquiry: The government isn't contending that any coercion was used to secure the execution of any of these agreements?

Mr. Hall: No, your Honor, I don't think that is in their pleadings, but I have been somewhat mystified by lines of inquiry that have been pursued with government witnesses, holding possibly an inference that the government was attempting to show that the dealer was being imposed upon.

The Court: All right.

Mr. Dixon: We direct your Honor's attention to paragraph 33 of the complaint which covers——

The Court: Will you give me the complaint? Gentlemen, [fol. 1353] I wonder if you have an extra copy of the complaint. The file is rather voluminous, and it is hard to handle, and if I had a copy of it which I could use, then I wouldn't have to bother with the file.

Mr. Hall: May I give you this one, your Honor? It is printed by Mr. Goble. I think it is correct.

The Court: So long as we are talking about Mr. Goble, I want to say that he has placed upon my desk each day the letters that he sends out, and I think while I gather he is not legally trained and is a layman, just a reporter and with knowledge of the oil industry, he is giving a very fair summary of the proceedings that happen here. He may not get some of the legal implications of some of the discussions, but at any rate, he has not anticipated, as sometimes happens in a case where there is considerable publicity, that we are making any rulings except temporary ones which affect only the particular issue and the testimony before us.

Now, the reason I was asking the question I propounded was because I noticed yesterday and today that in several instances Mr. Hall has asked a witness whether he was satisfied with his dealership, and while I didn't intervene and no objections were made, the inquiry having been repeated I raise the point because, as I gather, what was commonly contended was not that the agreements were not entered into voluntarily, but that the implications of the [fol. 1354] agreements, both by their terms and by their practice, were a practical exclusion of dealing in products from other suppliers, except in rare instances where permission was granted because the Standard Oil Company was unable to supply them.

I am merely stating what I understand to be the theory upon which the government's testimony has gone into the record.

[fol. 1355] Mr. Dixon: You are quite right, your Honor.

The Court: If that is true, then this inquiry does not become——

Mr. Dixon: Material.

The Court: —material at all. I may say—and I mean it, Mr. Hall—I may say that you have not stepped over, even in the enthusiasm of advocacy, which is a part of any lawyer's experience, and particularly one of the long experi-

ence you have had. Of necessity, a lawyer is carried away at various times by the quality which makes him a good lawyer. He is a good advocate and, consciously or unconsciously, he may sometimes overstep a little on cross examination in order to press a point. You have not done it, and that is why I have not intervened. Otherwise, if I believed you were doing it, I would have intervened, as you know, without the objection on the other side.

But it occurred to me that the inquiry was not germane and there was not any need to encumber the record with it, because it has no relevancy under the issue. And now, under what Mr. Dixon has stated, it does not relate to any contention, directly or indirectly, that the Government makes.

Mr. Hall: My fears are set at rest, your Honor.

The Court: All right, that I have allayed your fears. I did not know you had any as a matter of fact. Off the record:

[fol. 1356] (Brief comment off the record.)

By Mr. Hall:

Q. Now, Mr. Bryan, you said that you had 10 or 12 customers who expressed definite brand preferences for some lubricating oil Standard didn't sell, when you handled an oil change, is that right?

A. Yes, sir.

Q. How many what you might call regular customers have you had as a maximum during the time you have had the station?

A. Regular customers, that is, lubrication customers, sir?

Q. Yes; what you call regular customers, not transient people.

A. A very high percentage of my total business, sir, due to my location and the class of trade that I have there.

Q. Yes.

A. I am on the edge of the downtown business district and I service the business owners' cars.

Q. Well, could you give me an approximation as to how many of those there might be as a maximum at any time?

A. As a maximum at any time? Well, I have got to do a little guessing here or figuring in my mind and talk it out

load. We will say possibly 150 to 200 lube jobs a month; figuring on 90 per cent of my business as being regulars—we probably don't have more than 20 to 40 transient lubes a [fol. 1357] month—the rest is all regulars, sir.

Q. Did I understand you to say that Standard Oil Company objected to your stocking some special lube oils for those particular 10 or 12 customers?

A. You say did they object?

Q. Yes.

A. That would be not to say: No, you cannot or you should not, if that is what you mean by "object."

Q. Nobody from Standard, for example, ever said that they were going to terminate your dealer agreement TBA because you were doing that, did they?

A. Oh. Standard hires men smarter than that. I mean they wouldn't do that, I am sure, under any circumstances.

Q. Well, now, that agreement, you knew, could be terminated on six months' notice, is that right?

A. Minimum, 30 days, sir.

Q. 30 days' notice at the end of any six months?

A. Yes; at the end of any six months period.

Q. And you could do the same, couldn't you?

A. Yes, sir.

Q. Now, aside from those 10 or 12 customers that wanted a particular brand that was not a Standard brand of oil, how many other customers would you say expressed a preference for a brand that was not a Standard brand?

A. Oh, we possibly will have maybe two or three people [fol. 1358] a day going over the gas islands that, when we determine that they are low on oil, will ask if we have some particular brand of oil other than what we are able to supply.

Q. You don't mean to say that you didn't at times sell those two or three people on Standard brands, do you?

A. I did my very best to sell them Standard brands. If I was not able to convert them to Standard, I did not supply them with other products I had.

Q. Perhaps you misunderstand me.

A. Pardon me.

Q. What I am asking you is: Didn't you on occasions convert certain of those kinds of people to a Standard brand?

A. On occasions; yes, sir.

Q. Now, still speaking of those—I am not talking about the 10 or 12 people, now, who were your regular customers and who have other brand preferences, but I am speaking now about these other people that come into the station and express a preference for a brand not a Standard Oil brand—now, as to those people what brand preferences do they express? Can you remember some of the names of brands they ask for?

Mr. Thody: I object to that, your Honor. It is outside the scope of the direct examination and it is immaterial.

The Court: Well, no. No; I think certain specific [fol. 1359] brands have been brought in and, while this witness has not indicated any brand, he has stated that he has had persons express a preference. Then they have a right to pursue that to find out whether they are of the type already testified to by other witnesses, which are nationally known products, or whether they were some other products. All right. Have you answered the question?

The Witness: No, sir.

The Court: Can you tell any of them?

The Witness: Yes; I can tell some of the names.

The Court: All right.

A. Pennzoil, Macmillan, Conoco.

The Court: I haven't heard that one.

The Witness: Conoco?

The Court: I mean I haven't heard it in this courtroom.

The Witness: Conoco Mph is one that I stock.

The Court: Speak up.

The Witness: Conoco Mph is one that I stock.

The Court: Oh, that is one you stock. All right. Whose product is that?

The Witness: Continental Oil Company.

The Court: Continental Oil Company.

The Witness: Yes, sir. They don't market gasoline in California, only their lubricating oils.

By Mr. Hall:

[fol. 1360] Q. Can you give me some more names that are asked for, Mr. Bryan?

A. Well, Mr. Hall, I think I have had every known brand and unknown brand requested over the driveway during the six years that I have been there, because——

Q. Well, pardon me. How many would that amount to altogether? Perhaps that will satisfy my curiosity.

A. In brands? I would say, without a doubt, at least 50 brands, sir.

Q. 50 brands. So that it is perfectly true that if you filled up the yard of your station with oil cans, and your office with oil cans, and your lube room with oil cans, you would still have people coming to your station asking for brands that you did not have in stock?

A. That is quite true, sir.

Q. That is correct, is it?

A. That is right.

Q. Now, you mentioned some accessories called Whiz Products?

A. Yes, sir.

Q. Do you remember those?

A. Yes, sir.

Q. And you said they carried quite a line, is that right?

A. Primarily automotive chemicals; yes, sir.

Q. And in connection with your discussion of Whiz you [fol. 1361] mentioned some conversation; I think it was with a man by the name of Bilger and a man by the name of DeWitt, is that correct?

A. Yes, sir.

Q. Did either one of those gentlemen tell you that you were in danger of losing your TBA agreement if you didn't handle miscellaneous accessories put out by Atlas?

A. No, sir.

Q. As I understood your testimony, they went through your place of business and where they would see a Whiz product of another accessory that was not put out by Atlas, or sold you by Standard they would point out to you that Atlas had something competitive or comparable; isn't that the size of it?

A. Possibly I didn't make myself clear enough, Mr. Hall, in answering.

Q. Well, I am asking you if that was not your testimony that you gave?

A. In the discussion of these Whiz products there was comparison made between comparable products in the Atlas line.

Q. Yes.

A. But they were not there primarily to check my stock——

[fol. 1362] Q. Now, wait a minute. I am not asking you what they were there for.

A. Oh.

Q. I want you to tell me all that they said, and I don't want you to speculate as to why they were there.

A. That was no speculation, sir.

Q. We want the facts. All right, now, have you told all that they said to you?

A. Yes. It was a minor discussion with reference to the accessories.

Mr. Hall: That is all.

The Court: Any redirect?

Mr. Thody: Yes, just a few questions, your Honor.

Redirect examination.

By Mr. Thody:

Q. At the time your initial TBA agreement was negotiated with you, Mr. Bryan, was there ever any mention of a dealer agreement at all as another form of agreement which you might possibly enter into?

A. Not to my knowledge; no, sir.

Q. Now, with respect to your testimony on these 10 or 12 customers, was it your testimony that these are regular customers?

A. They were, sir.

Q. And, in addition to those regular customers, you [fol. 1363] had other persons making brand preferences?

A. Yes.

Q. So at the time this oil was found on your premises, the oil was there expressly for the purpose of using and supplying it to these 10 or 12 customers, is that correct?

A. That is right; and to get their entire lubrication business. In other words, if I could not supply the motor oil, after request, they went to the dealer, or I mean to the car dealer, and they would get their lube and oil change at the same place; where, if I could supply the oil that they needed, I also got the lubrication job which is practically all labor and is desirable to have.

Q. With respect to these other parties who would come into your station, other than your special customers that you have testified to, on some occasions you have stated that you converted them to Standard oil products?

A. I always made that effort, sir.

Q. On some occasions is it true or is it not true that you failed to convert them to Standard oil products?

A. Yes, sir; and I could explain why, I believe.

Q. What would happen to those customers then?

A. Well, sir, it is much more difficult to convert a man that is only adding a quart of oil to mix brands of oil. It would be easier to convert him to a Standard product if he were having his oil changed so he would have the crank [fol. 1364] case drained and flushed and all of the same oil put in than it is to make another oil add of another make. In other words, I am rather proud of my ability as a salesman on a driveway, and all of them that I can convert, I think it has been definitely done, and I think my records will prove it.

Q. Is it true, however, that on some instances you did fail to make them convert?

A. On the oil adds; yes, sir.

Q. You have testified to a number of brand preferences that were made to you, including Conoco and, I presume, MacMillan?

A. Yes, sir.

Q. You have previously testified that you stocked Conoco Mph and MacMillan Ring-Free. Why did you select those oils as distinguished from Pennzoil and these other brands you have mentioned?

A. They were the oils—in other words, I stocked them expressly for on request of these particular customers, to be able to secure their business. I mean I didn't stock it for general sale over the driveway.

Q. Is it true or is it not true that in the case of MacMillan, for instance, that you would have more customer request for MacMillan than other oils?

A. Oh, yes. In other words, you couldn't stock all of [fol. 1365] the oils. I mean if I stocked every brand. So I picked only the ones that I had the most demand for and what I could gain the most by having.

Q. At the time you testified in response to questions asked by Mr. Hall concerning the visits by Mr. Bilger and Mr. DeWitt, you stated that there were some other reasons why those men were visiting your station at the time that they checked through your Whiz line, is that correct? Can you state what those other reasons were?

Mr. Hall: Just a minute. The witness has already testified that he gave the entire conversation. He stated that emphatically.

The Court: All right.

Mr. Hall: So that any further statement by the witness would be speculation, conjecture and conclusion.

The Court: I think the question should be changed. Did they give you any other reason? If they gave you any reason, all right. If you suspected it, you can't testify. Did they give you any reasons other than those you have already testified to?

The Witness: Your Honor, in answer to Mr. Hall's question as to whether I stated the entire conversation——

The Court: Yes.

The Witness: —with reference to the other products I did state the entire conversation. I mentioned that it was [fol. 1366] of minor importance.

The Court: That is right.

The Witness: But there was other conversation there, sir, and of a major importance to me. In other words, Mr. Bilger doesn't make a habit of visiting every gas station.

The Court: I do not think there is any materiality on the facts in this case.

By Mr. Thody:

Q. I believe, Mr. Bryan, that Mr. Hall asked you concerning the termination notice which is one of the documents in evidence, dated December 12, 1947. Did Mr. Bilger discuss that with you?

A. Yes; it was discussed with Mr. Bilger and Mr. Furrer.

Q. And what was said concerning that termination notice?

Mr. Hall: Well, I object to that. That is irrelevant and immaterial. The witness has said that the termination notice was disregarded and that he goes on and occupies the station. How would the conversation be material?

By Mr. Thody:

Q. Mr. Hall, I believe, Mr. Bryan, asked you concerning the March 2nd letter which you testified superseded the December 12th termination notice, is that correct?

Mr. Hall: No; I did not ask him about that, Mr. Thody. That was already in evidence as part of your evidence. [fol. 1367] Mr. Thody: I think you asked the witness, if your Honor please, concerning this March 2nd agreement; and Mr. Hall specifically asked him if that superseded the agreement dated the termination notice dated December 12, 1947, and was specifically referred to by Mr. Hall in his cross examination.

The Court: All right.

Mr. Hall: I did not refer to that document in my cross examination.

The Court: All right. You may answer the question.

By Mr. Thody:

Q. I call your attention to the document executed March 2nd, 1948 which refers to the rental agreement between you and Standard Oil and ask you to examine this provision. Are you familiar with it?

A. I am, sir.

Q. Does it refer to the amount of rent which you must now pay at that station?

Mr. Hall: Wait a minute. The document speaks for itself and the question calls for that which is not the best evidence.

Mr. Thody: May the record show, your Honor—may I call your attention, your Honor, that the document dated March 2nd, 1948 refers to a rental in the amount of $150.00 per month; whereas the dealer agreement TBA dated December 12, 1945 refers to a minimum rental of $75.00 per [fol. 1368] month, with an additional $2.75 per month provision for a sign.

The Court: All right.

Mr. Hall: There, if the court pleases, is a prime illustration of my confusion and my belief that counsel for the Government are trying to claim that we are abusing our dealers.

The Court: Well, all right. The inference to be drawn from the facts to which my attention is called is a matter for the future.

Mr. Thody: That is all.

The Court: All right; anything further with this witness?

Mr. Thody: No, your Honor.

Recross examination.

By Mr. Hall:

Q. When you went in there the station was already up, wasn't it?

A. I beg your pardon, sir?

Q. When you went in there the station was already up?

A. Erected?

Q. Yes; already erected?

A. Oh, yes; had been for a number of years.

Q. The station has always belonged to Standard Oil Company, hasn't it?

A. Yes, sir.

[fol. 1369] Q. You have had no interest in the real property?

A. In the real property, no, sir.

The Court: All right.

By Mr. Thody:

Q. Do you have any investment in this station at the present time?

A. Approximately $7,000 in equipment.

The Court: That is not stationary equipment; that is removable equipment, is it not?

The Witness: It is movable, sir, but it can be used only for a service station work at that location. I mean if it were taken to another location it would not be adaptable.

The Court: It belongs to you. You have a right to move it in case your relationship is terminated; isn't that true?

The Witness: Yes.

The Court: All right, step down. We will take a recess.

(Short recess.)

[fol. 1370] The Court: Proceed, gentlemen. Call the next witness.

Mr. Thody: Mr. Samuel N. Blasker.

SAMUEL N. BLASKER, called as a witness by the plaintiff, being first duly sworn, testified as follows:

The Clerk: Take the stand, please, sir. What is your name, please?

The Witness: Samuel N. Blasker.

The Clerk: Just a moment. The middle initial is N?

The Witness: N.

The Clerk: And your last name, please?

The Witness: Blasker, B-l-a-s-k-e-r.

Direct examination.

By Mr. Thody:

Q. Where do you reside, Mr. Blasker?

A. 1369 8th Avenue, San Diego.

Q. What is your occupation?

A. I am a partner in a service station, as a service station operator.

Q. Where is that service station located?

A. At Rosecrans and Midway, San Diego.

Q. And what type of gasoline do you sell at that station?

A. Standard Oil products.

[fol. 1371] Q. Do you have a written understanding with Standard Oil concerning the sale and merchandising of their products at this location?

A. Yes, I have.

Q. I now hand you some documents described as Dealer Agreement TBA, a sublease, an agreement, a lease, and another agreement entitled "Lease," all dated December 27, 1945, and ask you to examine each of these agreements, and ask if this is your signature appearing on each of said agreements?

A. Yes, sir.

Q. Are these the agreements that you have with Standard Oil Company, that you have referred to in your previous testimony?

A. Yes, sir.

Mr. Thody: I now ask to have marked as Government's Exhibit, for identification, the various agreements referred to by Mr. Blasker.

The Clerk: Government's Exhibit 95, for identification.

By Mr. Thody:

Q. Will you describe, briefly, the location of this station with respect to downtown San Diego?

A. Well, it is just outside of the downtown district at rather a principal intersection.

Q. It is located at Rosecrans Avenue and Midway Drive?

A. Rosecrans Avenue and Midway Drive, that is correct.

Q. Now, is this Midway Drive one of the principal [fol. 1372] traffic arteries between Los Angeles and San Diego?

A. It parallels the principal artery. It is the second in importance.

Q. Does Rosecrans Avenue connect with any principal arteries or any principal highways in San Diego?

A. Well, it is a cross-town highway and connects the Marine Base and Naval establishments, and also a road to downtown San Diego with the main portion of the city.

Q. Is there or is there not a relatively large volume of automotive traffic that passes along these highways?

A. Yes, there is quite a large volume.

Q. Prior to the execution of these various agreements which you have testified occurred on December 27, 1945, did you have any conversations with any officials of the Standard Oil Company concerning the method of operation which you were to employ in your service station?

A. Yes.

Q. With whom did you have these conversations?

A. Mr. Lincoln and Mr. McCarthy and Mr. Teldroe.

Q. And when did they take place?

A. Prior to November of 1945.

Q. Where did they take place?

A. In the Standard Oil offices at the Bank of America Building, and also at their district office at the plant on Pacific Highway.

[fol. 1373] Q. On the occasion of this meeting, Mr. Blasker, was any reference made to the policy of Standard Oil concerning the sale of competitive oils in your service station?

A. It was mentioned during the conversation that they expected us to exclusively handle their products.

Q. Was anything further said than that?

A. Well, other sentences of equal importance in the principal portion of the conversation.

Q. Did you or did you not have the understanding that you were forbidden, then, to handle them?

A. Yes, I did.

Mr. Hall: Just a minute. That calls for a conclusion [illegible]

By Mr. Thody:

Q. Now, how soon

Mr. Hall: Pardon me. I didn't get the ruling on my objection.

The Court: I don't think he answered the question.

Mr. Hall: I believe he did, your Honor, before I could object.

The Court: Will you read the question and answer?

(The question and answer were read.)

The Court: The answer will be stricken and the objection sustained.

By Mr. Thody:

Q. At what time did you commence the operation of this station?

[fol. 1374] A. We began erection in November of '45. As we had actually to build the station prior to its occupancy, my partner and I helped physically to erect the station in connection with the Trepte Construction Company.

Q. When did you commence dispensing your gasoline and oil?

A. May 30, 1946.

Q. At the time of your initial sales venture, what brand or brands of oils were you selling?

A. RPM and Standard Penn.

Q. Following this period of time did you have any customers or prospective customers who entered your station and asked for other types of oils?

A. Yes, we did.

Q. Approximately how many?

A. Oh, two or three per cent.

Q. Can you say with relation to numbers approximately how many each day?

A. That would be hard to do because the question of the product would be put to others than myself. There are six or seven persons on the station, but we have always received inquiries and requests for other products.

Q. During that initial period when you first got started were you able to supply these demands for these competitive oils?

[fol. 1375] A. We didn't attempt to stock any other oils.

Q. Do you stock any other oils at the present time?

A. I handle a small quantity of Quaker State.

Q. And from whom do you buy that?

A. From the LaMesa Oil Company in LaMesa, California, a division of San Diego. Excuse me. I would like to remark—well, that's all right. We will just pass it.

Q. Is the LaMesa Oil Company located in San Diego?

A. It is just outside.

The Court: LaMesa is a town outside of San Diego.

The Witness: Yes. They deliver this oil in an unmarked truck that might be of interest to know, to our station.

By Mr. Thody:

Q. Have you been furnished with any advertising by the Quaker State Oil Company?

A. They furnished us with a display cabinet, but we haven't used it.

Q. Have you ever used it?

A. No.

Q. Where do you keep your competitive oil?

A. We have a storeroom in the back of the station and it is kept there; just keep it out of sight. On recommendation it was decided that was the best place to keep it.

Q. Do you have Standard Oil representatives who visit your service station from time to time?

[fol. 1376] A. Oh, yes.

Q. Who are such representatives?

A. Well, Mr. Earl Studley. He is the merchandiser. Then there is a Mr. William McCarthy. He is the district manager. And Mr. Tremaine, I think he is the Chevron district manager, and Mr. Kirkendahl, he is also a merchandiser. We have visits from most all of the persons that are associated with the Standard Oil Company here.

Q. Have any of these officials ever seen this Quaker State merchandise in your station?

A. No.

Q. Now, from whom do you presently purchase your automobile tires?

A. From Standard; from the Atlas Supply.

Q. Now, are you acquainted with the terms and provisions of your dealer agreement TBA?

A. Yes.

Q. Do you purchase them pursuant to the terms of such agreement?

Mr. Hall: That is objected to as calling for a conclusion of the witness.

By Mr. Thody:

Q. Do you ——

The Court: Are you withdrawing the question? Do you want to reframe it?

Mr. Thody: Perhaps I should wait for a ruling.

[fol. 1377] The Court: Why don't you ask him to describe what he is doing? Whether he does it pursuant to the agreement or not calls for a conclusion.

By Mr. Thody:

Q. Do you or do you not at the present time purchase any other tires or tubes other than the Atlas tires?

A. Yes, I do.

Q. You do?

A. Just on very rare occasions.

Q. Well, explain the circumstances of these rare occasions?

A. Well, when we have specific requests for them. Occasionally sizes can't be obtained from the Atlas Supply, or if there is a delay in shipment then I procure the tires locally to satisfy some particular need.

Q. Did you ever purchase outside merchandise when Atlas is able to supply you with those sizes?

A. Oh, no.

Q. Or that type of merchandise?

A. No, I do not.

Q. Do you stock other types of tires and tubes at the present time?

A. I have one or two.

Q. When did you purchase those?

A. Well, one was taken in in trade, and the other was [fol. 1378] obtained, oh, more than a year ago.

Q. Was this one you took in in trade new merchandise or old?

A. It is new merchandise. It was a swap for some other merchandise which he obtained.

Q. Well, what brand is that?

A. It is a Hood.

Q. How long ago did you obtain it?

A. About three weeks ago.

Q. Now, have you ever purchased in the past, between say, May 1946, when you commenced your operations, up to the present outside tires and tubes?

A. Yes. When tires were not plentiful, why, we obtained the tires locally.

Q. What brand?

A. We have bought Goodyear and Firestone principally.

Q. Did you sell those in the regular course of business, to your trade?

A. Yes, we stocked them. We had quite a supply on hand.

Q Are you buying any of those tires now?

A. No.

Q. At the time you stocked and sold Firestone and Goodyear tires, were your customers satisfied with this type of merchandise?

[fol. 1379] A. We never had any complaints.

Q. Now, from whom do you now obtain your batteries?

A. From the Atlas Supply.

Q. Do you obtain batteries from any other source at the present time?

A. No.

Q. Have you previously obtained batteries from any other sources?

A. Yes, from local jobbers.

Q. What brand or brands?

A. Hobbs, Federals, Stowe, U. S. That seems to cover them.

Q. And when did you purchase those?

A. Well, about a year ago. Nothing was bought recently, later than about seven months ago.

Q. Now, with reference to these Hobbs or Willards or other batteries, did you sell those in the regular course of your business?

A. Yes, I did.

Q. Did you ever have any dissatisfaction expressed to you by your customers with respect to these products?

A. No.

Q. Now, at the present time are you obtaining your tires,

tubes and batteries on consignment or do you purchase them outright?

[fol. 1380] A. No, they are exclusively placed in on consignment.

Q. Have you ever attempted to purchase them at any time?

A. Yes. There was some disagreement sometime back, principally in connection with billing, Standard Oil billing, which was considered bad, and we had some disagreement. We offered to buy the entire stock, and the local merchandiser called Los Angeles long distance to determine whether that was acceptable, and we were told that they would remedy the situation as connected with the billing, and that the purchase could not be made outright. We were restricted so far as the buying of our tires.

Q. By that you mean you were unable to buy?

A. That is so.

Q. And your must handle them only by consignment?

A. That is so.

Q. Now, with reference to your other types of accessories, do you sell other miscellaneous accessories, automotive accessories, other than tires, tubes and batteries?

A. Oh, yes. We carry quite a lot of them.

Q. Have you ever had any discussion with any Standard Oil officials concerning the purchasing of these miscellaneous accessories?

A. Yes.

Q. With whom?

[fol. 1381] A. Mr. Earl Studley.

Q. Who is Mr. Studley?

A. Mr. Studley is our merchandiser.

Q. He is the one you said calls on your station regularly?

A. Yes, he calls, oh, a month or six weeks apart.

Q. Do you recall any specific time you had discussions with him concerning automotive accessories?

A. I believe the question is raised every time he visits us.

Q. When was the last time that you recall a discussion?

A. About six weeks ago.

Q. And where did such a discussion take place?

A. I would like to make one comment in connection with that statement, that my partner and I, we alternate days in the station, and as a result the merchandiser can visit

and I may not see him, whereas my partner may, and the same discussion usually takes place with either one of us.

Q. Well, you can testify only to the discussions you have had, and not those of your partner.

A. My discussion was about six weeks ago.

Q. Where was that?

A. In my station, in the store.

Q. Who was present?

[fol. 1382] A. Just Mr. Studley and myself.

Q. And what was said?

A. That we should try to obtain a larger volume bonus and buy a greater quantity of the Atlas accessories.

Q. Did he say anything further at that time? Did you have any discussion concerning any other matters which might relate to your purchasing of accessories?

A. There is always conversation, but I don't recall the exact statements. The inference is always that we should buy more.

Q. Now, do you advertise Standard Oil products at your station?

A. There are certain types of signs which exist on all Chevron service stations. I have attempted, however, to have erected for my particular needs a huge sign on the roof of the station.

Q. Have you ever had any conversations with Standard Oil officials concerning that sign?

A. Yes, I——

Mr. Hall: Just a minute. That is objected to as irrelevant and immaterial and outside the issues in the case.

The Court: Do you insist on the question?

Mr. Thody: I will reframe the question, if I may.

The Court: All right.

By Mr. Thody:

[fol. 1383] Q. In connection with your discussions with the merchandiser that you have referred to, pertaining to your purchasing of your requirements of automotive accessories, was there any discussion of the relationship of the sign to your purchasing requirements of automotive accessories?

A. Yes.

Q. And what were those discussions?

A. This happened a short time ago. We were having a

little difficulty with respect to understanding the practices of the Standard Oil manner in which to handle our credit and charge accounts, and we were being examined rather thoroughly at each time when we would submit the credit cards to Standard for payment of some commodities. This became more or less embarrassing. We decided to check into the reasons for our being considered as bad boys, as we put it. So we had a conference involving Mr. Tremaine, Mr. McCarthy, my partner and myself in Mr. Tremaine's office at the Standard Oil business office in the Bank of America Building.

[fol. 1384] Q. When was this?

A. This was about four weeks ago.

Q. And what was said?

A. Well, initially we had discussed the matter of what we brought the meeting to disclose, that is, the manner in which they handled credit cards. They first objected to our use of the credit card for charging other than the Standard Oil products and the products merchandised through the Atlas Supply Corporation. Then, more particularly as applies to one instance, where we requested use of the credit card for charging wheel bearings associated with a wheel pack that we were applying to a car.

Well, we were informed then that we were not to use the S28, as it is known, for any purpose other than for the Atlas Supply products and the Standard Oil products.

Well, that being clarified, we brought up the discussion of the sign. We had been informed that we were to receive a huge sign on the roof, displaying Chevron products, that is, mentioning Chevron products. We waited a long time for it and it was not forthcoming. They informed us at that meeting that it had been cancelled. We asked for an explanation and there was none given. They just said: "Let's forget it." Well, we insisted and they said, "Well, if you folks would buy larger quantities of the Atlas Supply merchandise, then we will re-open the issue relative to [fol. 1385] the sign at some future date." And that closed the incident.

Q. When was this discussion of the sign? When did that first take place? You say it had been hanging fire for a long period of time.

A. Well, the sign was discussed at the very inception of our agreement with Standard Oil.

Q. Was it discussed in this meeting in November of 1945 you have previously referred to?

A. Yes; it was.

Q. What was promised to you or discussed at that time?

A. Well, that the sign problem would be presented to the advertising division of Standard for their approval, and that seemed to support the idea. They came out several times and looked, and a design corporation—I think it is California Electric Products—came in several times and measured to determine the strength of the building and also adequately plan a sign for erection on the roof.

Q. Have you ever heard anything since this last meeting as to when you might get the sign?

A. No.

Mr. Thody: I ask, your Honor, that Government's Exhibit No. 95 for identification be admitted into evidence.

Mr. Hall: Each and all of the documents so offered are objected to on the grounds that they are irrelevant and [fol. 1386] immaterial.

The Court: Overruled.

The Clerk: 95 in evidence.

By Mr. Thody:

Q. Now, Mr. Blasker, I direct your attention to the agreement entitled "Lease" of these premises at this location on Rosecrans and Midway Avenue in San Diego, the lease from you to Standard Oil, and call your attention to Paragraph 2 thereof, which reads that the lessee agrees to pay the lessor rental for the use and occupancy of leased premises in accordance with $200.00 per month. Now, have you been receiving those $200.00 per month from the lessee?

Mr. Hall: Now, just a minute. That is objected to as irrelevant and immaterial and not within the issues of the case.

The Court: My thought was on something else.

Mr. Thody: This is merely preliminary, your Honor.

The Court: All right.

The Witness: May I answer?

The Court: You may answer.

A. No; we haven't been paying that. I would like to continue further, if I may.

Mr. Thody: Yes.

A. We have a sublease which in turn the Standard Oil Company becomes the lessor and we are the lessee, and we [fol. 1387] are to receive—they are to receive $200.00 in turn from us, which cancels out the original agreement.

Q. And you are pointing to Paragraph 3 of the sublease, 3 of the sublease?

A. Yes, sir; dated December 27th, 1945. There is one more——

Q. So it is your testimony that the $200.00 reference in the sublease cancels out the $200.00 reference in the lease?

A. That is correct; yes, sir. May I make another comment here?

Q. Yes, sir.

A. That is in connection with our basic lease. We have a $250.00 obligation to our landlord and——

Q. Who is this landlord?

A. The landlord is Arnet Speer, and we are more particularly dealing with Percy H. Goodwin Company. This $250.00 is a minimum rental. And we have, in addition to that, a five per cent clause which is imposed after $6,000 amount of merchandising is gone.

Q. Have you been paying that rent to the owner regularly?

Mr. Hall: Now, just a minute. Just a minute, please, Your Honor, I am asking to have the previous answer of the witness stricken, and objecting to this last question on [fol. 1388] the ground that the relations between this man and the landlord can have no possible relation to any issue in this case.

Mr. Thody: The Government submits they do, your Honor, because the testimony will show that the occupant here holds the master lease of the premises, and actually between Standard Oil and the dealer there is no exchange of money. In previous questions Mr. Hall has inquired as to whether or not the operator was set up in business, and so on. In this particular instance we are merely trying to show that the operator has the master lease and is obligated to pay other persons a substantial amount for rental of his property.

Mr. Hall: The questions, if the court please, go much beyond that, and the documents——

The Court: All right; we will limit them, then, to that.

By Mr. Thody:

Q. Do you own this property?

A. No; I do not.

Q. Do you lease it?

A. Yes; I do.

Q. Do you lease from the parties you have referred to in your previous testimony?

A. I lease from Arnet Speer through their agent, Percy H. Goodwin Company.

Q. And what is the rental paid by you?

[fol. 1389] A. $250.00 minimum plus five per cent over $6,000 gross.

Q. How much on an average does that amount to per month or has it in the last year amounted to per month?

A. About $450.00 per month.

Mr. Thody: That is all.

Cross-examination.

By Mr. Hall:

Q. Standard Oil Company built the station on that property, didn't it?

A. No, sir.

Q. Did it pay anything for the station on the property?

A. They advanced some money; yes.

Q. How much did they advance?

A. I would like to modify that. They didn't advance it. They paid the contractor $20,000.

Q. $20,000?

A. Yes, sir. And they expected me to have a substantial interest in the station by demanding that I put up $6,000.

Q. Yes.

A. I have a $6,000 actual equity in that building.

Q. In your testimony you mentioned credit cards and some dispute with the company concerning charges on the credit card accounts.

[fol. 1390] A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. Well, if I understand you correctly, you people were charging on credit card accounts merchandise which was not purchased from Standard Oil Company?

A. That is correct. May I add to that, sir?

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Supreme Court of the United States

OCTOBER TERM, 1948

No. 279

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vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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24-F—Letter dated October 27, 1947 from G. C. Briggs to R. W. Goodale re Competitive Lubricating Oils—Chevron Truck Stations	2407	1443
24-G—Letter dated February 17, 1948 from E. D. Thompson to H. R. Cuyler re Competitive Lubricating Oil—Chevron Truck Stations	2408	1444
24-H—Letter dated February 5, 1948 from E. D. Thompson to H. R. Cuyler re		

Plaintiff's exhibits—Continued	Original	Print
Competitive Lubricating Oils—Chevron Truck Stations	2409	1445
24-I—Letter dated February 3, 1941 from W. A. Frazer to C. T. Furrer re Competitive Lubricating Oils—Cheyron Truck Stations	2419	1446
53—Letter dated August 29, 1947 from Standard Oil Company of California to Union Square Garage Corporation, etc.	2411	1447
53-A—Amendment to Garage Management and Occupancy Agreement, dated July 1, 1945, between Union Square Garage Corporation and Union Square Garage, Inc., etc.	2422	1459
85—Notice dated January 3, 1946, by Bernice Duffin to Standard Oil Company of California, of the appointment of Darwin G. Duffin as operator of service station, etc.	2472	1498
99—Answer of Standard Oil Company of California to Interrogatory #4, Part II, re Total Gross Quantities of Gasoline Sold to Dealers	2475	1499
100—Answer of Standard Oil Company of California to Interrogatory #4, Part III, re Total Gross Quantities of Automotive Lubricating Oils Sold to Dealers	2476	1499
101—Lease Form S-450	2477	1500
102—Lease Form S-450-1	2481	1504
103—Lease Form S-450-2	2485	1508
104—Certificate of Secretary of State of the State of Oregon	2489	1514
105—Merchandise Inspection Report	2490	1514
Defendants' exhibits:		
B—Questionnaire re Retailing Agents and Amount of Business	2491	1515
C—Tide Water Associated Oil Company Sales Statistics—Year 1941	2492	1516
D—Tide Water Associated Oil Company Sales Statistics—Year 1946	2493	1517
E—Service Station Lease—Tide Water Associated Oil Company form 4580-B	2494	1518
F—Merchandise Agreement for Ford Tires and Tubes, Aero Batteries, Auto Supplies of Tide Water Associated Oil Company	2496	1524
G—Questionnaire and Answers of Shell Oil Company	2499	1534

Defendants' exhibits—Continued.	Original	Print
H—Application form for Shellubrication Dealers' License, etc.	2505	1538
I—Service Station Lease Form of Shell Oil Company, etc.	2517	1554
J—Tabulations re Sales of General Petroleum Corporation	2521	1566
K—Service Station Lease (L) form of General Petroleum Corporation, etc	2527	1569
L—Dealer Gasoline Contract (L)—Form of General Petroleum Corporation, etc.	2532	1578
M—Tabulations re Sales of The Texas Co.	2536	1589
N—Agreement of Sale form of The Texas Company, etc.	2538	1590
O—Lease form of The Texas Company	2542	1603
P—Tabulations of Sales of Tires, Tubes, Batteries and other Accessories Through Employee-Operated Service Stations of Union Oil Company of California	2546	1609
Q—Service Station Lease form of Union Oil Company of California (form No. 909)	2550	1611
R—Retail Dealer Gasoline Contract form of Union Oil Company of California (form No. 896-F)	2552	1615
S—Tabulations re Sales of Union Oil Company of California	2554	1618
T—Tabulations re Number of Retail Service Station Outlets, etc., of Richfield Oil Corporation	2558	1619
U—Sales Contract form of Richfield Oil Corporation, etc.	2561	1621
V—Tabulation of Los Angeles Basin Competitive Service Station Report	2575	1649
W—Los Angeles Sales District Map dated October 23, 1942—revised September 1, 1943	2576	1650
X—Long Beach Sales District Map dated October 28, 1942—revised February 14, 1947	2577	1651
Y—Tabulation of San Francisco Bay Area Competitive Service Station Report	2578	1652
Z—Tabulation of Gasoline Sales—Retail Sales by Standard Stations, Inc. and Dealers versus State Total Taxable Motor Fuel Sales	2579	1653
AA—Tabulation of Automotive Lubricating Oil Sales, etc.	2587	1657

Reporter's Transcript of Proceedings—Continued

Defendants' exhibits—Continued

	Original	Print
BB—Tabulations of Tire Replacement Shipments, etc.	2591	1661
CC—Tabulations of Replacement Battery Sales—Retail Sales by Standard Stations, Inc. and Dealers versus Total Replacement Manufacturers	2599	1665
DD—Graphs Showing Retail Sales by Standard's Dealers as % of State Taxable Motor Fuel Sales	2607	1669
EE—Graphs Showing Retail Sales by Standard's Dealers as % of API'S Estimated Use of Automotive Lubricating Oils	2608	1670
FF—Graphs Showing Retail Sales by Standard's Dealers as % of Estimated State Total Tire Replacement Shipments Based Upon Rubber Manufacturers Association's Data	2609	1671
GG—Graphs Showing Retail Sales by Standard's Dealers as % of Estimated State Total Battery Replacements Based Upon Data from Ass'n. of American Battery Mfgrs., Dun & Bradstreet, Inc.	2610	1672
HH—Graphs Showing Retail Sales by Standard's Dealers as Percents of Estimated State Totals (Seven Western States)	2611	1673
II—Tabulations of Companies Marketing Over 1,000,000 Taxable Gallons of Gasoline in Seven Western States, 1946, etc.	2612	1675
JJ—Depositions of Francis S. Olaine, L. M. Bussert and Harry T. Hays	2615	1677
KK—Map of Western States with Numbered Subdivisions	2726	1754
LL—Bulk Distribution Data (Exhibit "A" to Deposition)	2727	1755
MM—Map of Western States with Lettered Subdivisions	2731	1758
NN—Package Goods Distribution Data (Exhibit "B" to Deposition)	2732	1759
OO—Location of Accessory Warehouse (Exhibit "C" to Deposition)	2735	1760
QQ—Photograph of Standard Station	2739	1761
RR—Photograph of Chevron Gas Station	2740	1762
SS—Telegrams	2741	1763
TT—Trademarks	2756	1778

	Original	Print
Record from D.C. U. S. Southern District of California—Continued		
Reporter's Transcript of Proceedings—Continued		
Defendants' exhibits—Continued		
UU—List of Competitive Service Station Construction Activity	2763	1785
VV—Dealer Agreement form of Standard Oil Company of California, etc.	2766	1788
WW—Lubrication Chart	2782	1822
XX—Specifications re Fan Belts, etc	2784	1824
YY—Chevron Merchandiser	2787	1827
ZZ—Booklet "Round Table," etc.	2808	1848
AAA—Form of Daily Report	2818	1858
BBB—Two Photographs of Garage	2819	1859
CCC—Tabulation of Automotive Oils—Year 1947	2821	1861
DDD—Tabulation of Average Installation Cost	2822	1862
EEE—Graph Showing Average Delivery Cost to Dealer Stations, etc.	2823	1862
FFF—Tabulation of Competitive TBA at Chevron Dealers Signed on TBA Agreements	2824	1863
GGG—Tabulation of Companies Marketing Their Own Brand of Lubricating Oil, etc.	2825	1864
Petition for Appeal	2828	1866
Assignment of Errors and Prayer for Reversal	2830	1867
Order Allowing Appeal	2842	1876
Bond on Appeal (omitted in printing)	2844	
Stipulation Designating Portions of the Record to be Included in the Transcript on Appeal (Pursuant to Supreme Court Rule 10)	2851	1876
Praecipe Indicating the Portions of the Record to be Incorporated in the Transcript on Appeal	2950	1943
Designation of Additional Portions of the Record Desired by Plaintiff to be Included in Transcript on Appeal	2955	1945
Clerk's certificate (omitted in printing)	2957	
Statement of points to be relied upon and designation of parts of record to be printed	2960	1946
Order noting probable jurisdiction	2962	1947

The Court: Go ahead.

Mr. Hall: Not as far as I am concerned.

The Court: Well, if it is by way of explanation, you may.

The Witness: Well, there was never any restrictions placed on us so far as what we should charge or not charge on those particular credit cards, and we assumed that that was permissible as well as any other subject, inasmuch as in one instance where a customer bought a large quantity of gasoline in the course of several months and he failed to pay, and the charge came back to me for reimbursement to the Standard Oil, which I paid. It was some $60-odd there, and inasmuch as I felt that I am obligated to take responsibility for these credits and charges, why, I assumed that then I was perfectly legitimate in my charging any merchandise which I sold on that particular credit account.

The Court: Well, it is not the credit extended by the company.

[fol: 1391] The Witness: There was never any mention of that, sir.

The Court: What is that?

The Witness: There was never anything in writing restricting me in that.

The Court: Did that create a bookkeeping problem when you gave credit for merchandise which is not theirs and in which they do not have an interest at all?

The Witness: Yes, sir. But we also have a bookkeeping problem in maintaining records for Standard Oil Company, so I think it is even.

The Court: All right; it was tit for tat, was it?

The Witness: Well, we didn't try to retaliate or anything like that, sir.

The Court: All right. Anything further?

Mr. Hall: Just a minute.

Mr. Thody: After——

Mr. Hall: Pardon me just a moment.

The Court: Had you finished?

Mr. Hall: Yes.

The Court: All right.

Redirect examination.

By Mr. Thody:

Q. With reference to this $20,000 that was advanced by Standard Oil, did you, pursuant to clause 4 of your agreement, give a bill of sale to Standard Oil for all of the im-
[fol. 1392] provements on this property?

A. Actually, we gave them a $26,000 bill of sale for the $20,000 they advanced us.

Mr. Thody: That is all.

Mr. Hall: Just a moment. Pardon me just a moment, your Honor. That is all.

Mr. Thody: That is all.

The Court: All right, step down. Call your next witness.

Mr. Somerville: The Government calls Eugene Paridy.

Eugene V. Paridy, called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Eugene V. Paridy, P-a-r-i-d-y.

The Clerk: P-a-r-i-d-y?

The Witness: That is right, sir.

Direct examination.

By Mr. Somerville:

Q. Where do you reside, Mr. Paridy?

A. 3920 25th Street, San Francisco.

Q. Are you at the present time a Chevron operator?

A. Yes, sir; I am.

Q. Have you produced certain agreements with Standard Oil Company covering your station?

A. Yes, sir; I have them with me. Yes, sir.

[fol. 1393] Mr. Somerville: The Government asks that dealer agreement TBA, dated August 4, 1945, between the Standard Oil Company of California and E. V. Paridy, and other documents relating to the service station located at Day and Church Streets, San Francisco, California, be marked for identification.

The Clerk: Government's 96 for identification.

By Mr. Somerville:

Q. When did you first commence operations at this station, Mr. Paul?

A. September the 6th, 1945.

Q. At that time were supplies of tires, tubes, and batteries and other accessories capable of easy obtaining?

A. There weren't any.

Mr. Hall: Will you pardon me a moment? Is this witness mentioned in your answers to our interrogatories?

Mr. Somerville: No; he is not. Is there a question unanswered, Mr. Reporter?

The Reporter: No; there is no question unanswered, Mr. Somerville.

Mr. Hall: Pardon me, Mr. Somerville.

Mr. Somerville: I am sorry, Mr. Hall.

Mr. Hall: I object to any testimony of this witness on the ground that he is not included within the list of witnesses given us by the Government in answer to our interrogatories, and that fact is admitted by Mr. Somerville [fol. 1394] who is interrogating him.

Mr. Somerville: If your Honor please, the testimony of this witness concerns a transaction about which we will have other testimony of witnesses who were listed. At the time we did not know of the availability of this witness.

The Court: If it is merely corroborative, I think it is all right; but if he is going to testify to things which are not corroborative, I think it is not fair to do that, and I would hold you strictly to the answers to the interrogatories.

Mr. Somerville: That is true; it is corroborative.

The Court: Well, all right; with that understanding I will allow the interrogation.

Mr. Hall: Do you mean, if your Honor please, so that I will understand the ruling——

The Court: That this testimony is merely corroborative.

Mr. Hall: Corroborative of something that is coming later.

The Court: No; corroborative of something that has already gone in. Isn't that the case?

Mr. Somerville: It is corroborative of something that is coming.

The Court: What?

Mr. Somerville: The next three witnesses, your Honor, will all testify to the same matter.

[fol. 1395] The Court: Well, why don't you take your principal witnesses and save the time, and then maybe counsel will not object? Why don't you take the witness whose name you have, and then maybe we will eliminate the others if they are merely corroborative?

Mr. Somerville: The witnesses, none of them would be in the category of a principal. It is merely an oversight on our part.

The Court: All right; I will reserve the motion to strike the testimony of this witness if he is not in the category of a corroborative witness.

Mr. Somerville: Mr. Reporter, is there a question unanswered?

The Reporter: No; there is not.

By Mr. Somerville:

Q. Were you able to obtain supplies of tires, tubes, and batteries from Standard Oil Company at this time?

A. No, sir; I was not.

Q. How long did this period of shortage last?

A. Oh, I would say for about a year and a half at least.

Q. Did you handle competitive tires, tubes and batteries during this period of shortage?

A. As a matter of fact, that is all I had.

Q. When was Standard Oil Company first able to supply [fol. 1396] you with tires, tubes, and batteries, to your recollection?

A. I would say about two or three months after rationing went off, and then only in a very limited supply.

Q. Have you handled tires, tubes, and batteries on consignment?

A. Yes, sir; I do.

Q. When did such consignments begin?

A. I think in February, originally.

Q. February?

A. Of 1948, I should say.

Q. Were you instructed by anyone to the effect that you must handle tires, tubes, and batteries on consignment?

A. Well, I had tires——

Mr. Hall: Now, just a minute, if the court please. That calls for a conclusion of the witness. I have not objected

always, but they say to the witness: "Were you instructed by somebody?" Now, it may not be an instruction.

The Court: That is true.

Mr. Hall: I think they should be asked what was said.

The Court: I think they had better, yes. Let us reframe the question.

By Mr. Somerville:

Q. Were any conversations held, Mr. Purdy, concerning the matter of consignment at any time?

A. Well, to begin with, I had tires in my possession that I had bought and paid for from Standard Oil. And they [fol. 1397] came in and gave me a credit memorandum for them and took the tires over as their own, and then reconsigned them to me.

Q. When did this occur, February?

A. Around February. I am not just too sure.

Q. At your station?

A. Yes, sir.

Q. Were any other parties present?

A. Mr. McCune came around.

Q. Were any conversations held concerning the subject of consignment?

A. Well, at that particular time, I said if it was the same to them I would continue to pay cash for them, but I would say that they practically insisted that they be taken on consignment.

Q. Have you bought any competitive tires, tubes, and batteries since this policy of consignment began?

A. No; I haven't.

Q. Have you ever attended a meeting called by Standard Oil Company concerning the sale of the Atlas line of products?

A. Yes.

Q. Who requested you to come to this meeting?

A. Well, we wasn't made to come. We were asked if we wished to attend a meeting at the Diner on Market Street [fol. 1398] right off of 4th, I think it is. I am not too sure.

Q. When was such a meeting held?

A. I don't remember the exact date. I know it was on a Thursday and probably——

Q. What month, approximately?

A. It wasn't so terribly long ago. Maybe in February. I am not too sure about that.

Q. Where was this meeting held and who were in attendance?

A. It was held in a—oh, it is a small restaurant with a private room in the back. It probably would hold about 25 or 30 people at the most. Most all the Chevron dealers were invited. There was no compulsion to attend, just an invitation.

Q. Were any representatives of Standard Oil Company present?

A. Yes; Mr. Berwald, Johnny Berwald. He is the merchandise man. He came around and issued the invitation to attend.

Mr. Hall: Pardon me. Would you give me that name?

The Witness: Berwald, B-e-r-w-a-l-d. And Mr. Hink was there, and quite a few of the Chevron dealers, Mr. Strong. I don't think Mr. Carey was there. I was introduced to a lot of fellows whose names I don't remember. There was several other men from Standard Oil there, but Mr. Wood-[fol. 1399] side, Branch Manager—Assistant Branch Manager, was there. Outside of that I don't remember the names of the others. There was a lot of hand-shaking going on.

By Mr. Somerville:

Q. Who is Mr. Hink?

A. Mr. Hink, he is the Branch Manager, south side.

Q. Of Standard Oil Company?

A. Yes, sir.

Q. Did Mr. Hink make any remarks or addresses to the meeting?

A. Well, everybody made a little speech and Mr. Hink made a speech, too.

Q. What was said by Mr. Hink, as nearly as you can recall?

[fol. 1400] *Q. What was said by Mr. Hink, as nearly as you can recall?*

A. Well, to begin with there were some motion pictures shown of the making of the Atlas tires, and a few sandwiches served, and some beer and some coffee, and a few addresses, and, in substance, we were told that there had been quite a shortage of merchandise, but that it was be-

coming available, and that they would like for us to get out and hustle the sale of Atlas tires and products.

Q. Was anything said concerning your purchasing from competitive sources?

A. There was some remark made. I think they referred to them as pie wagons, that come around and sell merchandise. There isn't any of them, but that they handle a little bit of everything and not much of anything, and there was some mention made of that. And, also, the fact that they hadn't been able to supply us, but things were coming in and in the future they would be able to supply us with merchandise and they expected us to sell it.

Q. Was anything further said?

A. Well, I think Mr. Hink did say there was quite a few applications on hand for Chevron stations at that time.

Q. Was that said immediately after his remarks concerning pushing Atlas products and the availability of them?

A. I wouldn't be sure whether he said it first or [fol. 1401] afterwards. I know the remark was made.

Mr. Somerville: That will be all.

The Court: Cross-examine.

Cross-examination.

By Mr. Hall:

Q. Did you make a speech on that occasion, Mr. Paridy?

A. Me? Why do you ask that?

The Court: They want to know whether you went just for a good time or whether they made you work.

The Witness: I might say I was disappointed in the food. I came there hungry, and they didn't have much to eat.

The Court: Then probably you were not in the mood to make a speech.

The Witness: No, I didn't have enough to make a speech, to be honest with you, sir.

Mr. Hall: That is all.

Mr. Somerville: Mr. Paridy——

Mr. Hall: What is this? Redirect?

The Court: I thought you said, "That is all."

Mr. Hall: Yes.

Mr. Somerville: I think I might ask the witness this question——

The Court: You had finished?

[fol. 1402] Mr. Hall: Yes, I had finished.

The Court: All right.

Redirect examination.

By Mr. Somerville:

Q. Was the meeting more concerned with——

The Court: Oh, let's not talk about that. Let's proceed.

Mr. Somerville: That is all, Mr. Paridy.

The Court: Step down. Call your next witness.

Mr. Somerville: The government calls Mr. Strong, R. L. Strong.

Roy L. Strong, called as a witness by the plaintiff, being first duly sworn, testified as follows:

The Clerk: Take the stand, please, sir. What is your name, please?

The Witness: Roy L. Strong.

The Clerk: Roy L. Strong. Thank you.

Mr. Somerville: The government offers as its exhibit next in order the exhibit marked Exhibit 96, for identification.

Mr. Hall: The defendants object to each and all of the documents so offered on the ground they are irrelevant and immaterial.

[fol. 1403] The Court: Overruled.

The Clerk: 96 admitted in evidence.

Direct examination.

By Mr. Somerville:

Q. Mr. Strong, are you a Chevron operator?

A. I am, sir.

Q. Have you produced any agreements pursuant to subpoena covering your station? Have you produced any agreements between yourself and Standard Oil covering the service station which you operate?

A. Well,——

Q. I say, have you brought with you——

A. Oh, have I? Yes. Do you want the lease, or what?

Q. The agreement, TBA agreement.

(The documents were handed to counsel.)

Mr. Somerville: The government asks that dealer agreement TBA, dated July 1, 1946, between Standard Oil Company of California and Neil Andrus, and an assignment of this agreement effective December 1 to R. L. Strong be marked for identification.

The Clerk: Government's 97 for identification.

By Mr. Somerville:

Q. When did you first take over the station, Mr. Strong, and operate it?

A. In December of '46.

Q. After taking over this station, were you able to [fol. 1404] obtain supplies of tires, tubes and batteries from the Standard Oil Company?

A. I was not.

Q. Did you handle competitive tires, tubes and batteries during this period?

A. I did.

Q. When did supplies of Atlas tires, tubes and batteries become plentiful?

A. The first of the year.

Mr. Hall: Pardon me. The first of what year?

Mr. Somerville: When did they become plentiful? He said the first of the year.

Mr. Hall: Did he say what year?

Mr. Somerville: 1948, I understand.

By Mr. Somerville:

Q. Do your at the present time have Atlas tires, tubes and batteries on consignment?

A. I do.

Q. How many tires and tubes do you have on consignment, approximately?

A. Oh, I would say somewhere in the neighborhood of 30 to 35 tires, and probably the same in tubes, and batteries——

Q. Any batteries?

A. About 8 or 10 batteries, something like that.

Q. Were any conversations held between you and any representatives of Standard Oil Company concerning the [fol. 1405] policy of consignment?

A. Yes.

Q. Where and when, and with whom?

A. At the station at the beginning of the year.

Q. By whom?

A. By Mr. Bill McCune.

Q. Were any other persons present?

A. No, there wasn't.

Q. And what was said?

A. He said we were going to get tires on consignment and you would have to take them on consignment in order to participate in this volume bonus.

Q. Did you thereafter purchase competitive tires, tubes and batteries?

A. I did not.

Q. Does the fact that you were required to maintain a stock of Atlas tires, tubes and batteries have any effect on your ability to stock competitive tires, tubes and batteries?

Mr. Hall: Objected to. That assumes facts not in evidence.

The Court: Yes.

By Mr. Somerville:

Q. Have you any requests for competitive tires, tubes and batteries?

A. Yes, sir.

[fol. 1406] Q. Have you had salesmen call on you with respect to competitive tires, tubes and batteries since the policy of consignment?

A. Yes.

Q. Do some customers request tires lower in price than Atlas tires, tubes and batteries?

A. They do.

Q. Do you have customer demand for competitive lubricating oils?

A. Yes, I have.

Q. On those occasions, when you receive requests are you able to substitute Standard Oil products?

A. Not always.

Q. Did you ever attend a meeting concerning sales policy called by Standard Oil Company?

A. I have.

Q. Who requested you to come?

A. I wasn't requested, I was asked.

Q. You were asked?

A. Yes.

Q. Who asked you to come?

The Court: That is quite a distinction there. "Request" and "ask" mean the same thing. It wasn't a command performance, then, was it?

The Witness: I am sorry. No.

By Mr. Somerville:

[fol. 1407] Q. Describe the circumstances, if you will that brought you to this meeting. You must have been notified.

A. Well, John Burwald had called me and asked me if I would like to come to this meeting, and I told him I didn't know whether I could make it or not.

Q. Did he call you again?

A. And he called me several days later and I told him I thought I could make it, and so I went.

Q. Where and when was such a meeting held?

A. I believe it was March of this year.

Q. Where?

A. In a little diner on Market Street, San Francisco.

Q. Who were in attendance?

A. Well, there was John Burwald, there was Mr. Hink, there was Al Woodside, Bill McCune, and Chevron dealers.

Q. Did Mr. Hink make any remarks at this meeting?

A. Yes, he did.

Q. What, if anything, did he say in his remarks? As nearly as you can recall, what did he say?

A. Well, he said, "In the past we haven't been able to supply you with Atlas tires, tubes and batteries," and that they was rapidly overcoming that, and then he had gone on to say, "With the money that we were spending for advertising purposes, we thought it was up to you boys to sell our [fol. 1408] merchandise now."

Q. Was anything further said?

A. Oh, he did say that he had dozens of boys coming into the office every day looking for a Chevron station, and there just wasn't any available.

Q. When did he make this remark, after his other remarks?

A. I can't remember.

Mr. Somerville: I think that will be all. Just one moment, please.

Q. Was any mention made of pie wagons?

A. Yes, there was.

Q. Do you remember what the mention was?

A. Well, he just said, "I know they were around, and we haven't been able to supply you, and the dealers have been purchasing from pie wagons, but now that we have the stock I think it is up to you boys to purchase from us."

Mr. Somerville: That will be all. Your witness, Mr. Hall.

Mr. Hall: That is all.

The Court: Step down. Call your next witness.

Mr. Somerville: The government calls Augustus Carey.

Mr. Hall: Did you offer those last documents?

Mr. Somerville: The government offers in evidence Government's Exhibit 97, for identification.

[fol. 1409] Mr. Hall: The defendant objects to each and all of the documents so offered on the ground they are irrelevant and immaterial.

The Clerk: Overruled, your Honor?

The Court: Overruled.

Mr. Clerk: 97 admitted in evidence.

Augustus O. Carey, called as a witness by the plaintiff, being first duly sworn, testified as follows:

The Clerk: Take the stand, please, sir. What is your name, please?

The Witness: Augustus O. Carey.

The Clerk: Augustus, that is spelled——

The Witness: A-u-g-u-s-t-u-s.

The Clerk: And how do you spell your last name?

The Witness: C-a-r-e-y.

Direct examination.

By Mr. Somerville:

Q. Where do you reside, Mr. Carey?

A. 711-C Guerrero, San Francisco.

Q. Are you an operator of a Chevron service station?

A. Yes, sir.

Q. Where is that located?

A. On the corner of 19th and Guerrero, San Francisco.

[fol. 1410] Mr. Somerville: The government asks that the

distributor agreement dated October 22, 1943, between Standard Oil Company of California and W. L. Benson, a sublease dated October 22, 1943, between Standard Oil Company of California and W. L. Benson, and an assignment of these agreements to Augustus O. Carey dated May 18, 1944 be marked for identification. These documents were produced under paragraph 1, item 64 of subpoena No. 2.

The Clerk: Government's Exhibit 98, marked for identification.

By Mr. Somerville:

Q. Upon taking over this station, Mr. Carey, were you able to obtain supplies of tires, tubes and batteries from Standard Oil Company?

A. Not an adequate supply, no.

Q. Were there shortages of other items, such as oil filters and fan belts?

A. There were shortages of all items, practically.

Q. Did you attempt to procure supplies from competitive sources?

A. I did.

Q. When was Standard Oil Company first able to supply you with your requirements of tires, tubes and batteries?

A. I would say about six or eight months ago.

Q. Do you presently handle these items on consignment?

A. Yes, sir.

[fol. 1411] Q. By the way, with respect to the competitive items that you purchased, did you ever display them prominently in your station?

A. I have some displayed, yes.

Q. What items did you display?

A. Well, I have a radiator cleaner, a Wonder Wash for washing cars, and a filter, I have other filters, and I have oil lines.

Q. Have you ever displayed tires?

A. No, no tires.

Q. Where do you keep those tires?

A. Out in the back, in the washroom.

Q. Have you ever displayed batteries?

A. No, sir.

Q. Where do you keep the batteries?

A. I have a safe out there, a cabinet to keep the batteries in.

Q. Where do you display your Atlas tires, tubes and batteries?

A. I display the tires. I have displayed batteries. I don't at the present time.

Q. Did you ever handle flexible oil lines and flexible gas lines?

A. Yes, sir.

Q. Do you recall from what source you obtained those? [fol. 1412] A. I got them through my regular supplier, but I don't recall the address.

Q. They weren't acquired from the Standard Oil Company?

A. No.

Q. Did Standard at the time you put in this line have equivalent stock to offer?

A. No, they didn't have that line in, although they put it in later.

Q. When did they put in the stock of flexible oil lines and gas lines?

A. I would say along the last of last year, about November, October or November.

Q. Have any conversations occurred between you and any Standard Oil representatives concerning flexible oil lines and gas lines?

A. Yes, there was.

Q. When and where did such conversations occur?

A. It was at the station approximately at the same time the lines came out, the last part of last year.

Q. Who was present during those conversations?

A. There was just the two of us; Bill McCune and I.

Q. What, if anything, was said?

A. Well, he said that they had these lines now and they was putting them in stock, and that they could furnish me [fol. 1413] with those lines from then on out, and I could replace those with the other ones. I told him I would replace them as I sold the others out.

Q. Are you replacing them?

A. Yes, I am replacing them as I sell the others out.

Q. Were the competitive products good products?

A. Yes, they were good products.

Q. Do you have customers who request competitive brands of tires?

A. Occasionally, yes.

Q. Do you have customers who request competitive brands of batteries?

A. Yes, we have customers that want different brands of batteries.

Q. Have you been able to obtain batteries other than Atlas batteries at a cheaper price for resale to your customers?

A. That's right. Yes, sir.

Q. Can you give me an example of a battery that would be sold cheaper?

A. Well, I have an Eagle battery I sell that sells cheaper than the Standard battery.

Q. What is your margin on that battery?

A. Well, I can make around $1.50 to $2.00 more margin on it than I can on the Atlas.

[fol. 1414] Q. Do you have customers who request that battery?

A. Yes, we do.

Q. And you are able to pass on the benefit of your margin to them in the form of a reduced price?

A. That's right.

Q. Does that battery have any guarantee?

A. Yes, it has. They have a guarantee also.

Q. Is that guarantee equivalent to the Standard Oil and Atlas guarantee?

A. Yes. They have different guarantees; some for 12 months, 24, and 30 months, the same as any other battery.

Q. Have you attended a meeting called by the Standard Oil Company concerning the merchandising of their products?

A. Yes, sir.

Q. When and where?

A. Well, the first part of March at 993 Market Street, in back of a restaurant in a small hall there.

Q. And who was in attendance, Mr. Carey?

A. There was approximately 25 Chevron dealers, and Mr. Hink, Al Woodside, John Burwald, and I think Bill McCune was there, too.

Q. Did any of those gentlemen make addresses or speeches or remarks?

A. Yes, there was three representatives that talked. John Burwald talked on marketing, and different ways of [fol. 1415] marketing and so on. And Al Woodside, I

think he spoke a little bit; not much. And then Mr. Hink gave a speech.

Q. Who was Mr. Hink?

A. He is the district manager of the South Side.

Q. I would like you to tell the court exactly what Mr. Hink said, as nearby as your recollection permits.

A. Well, he spoke of supply and demand of tires, and that they were easier—they was out of allocation, and we would get all the tires we wanted now. And he spoke that during the war, when tires, tubes and batteries and accessories were hard to get, they co-operated with us and let us buy products anywhere we desired, and now that the tires, tubes and batteries were off allocation, and accessories were getting plentiful in the warehouse, they expected us to cooperate with them. And then he said something about the pie wagon that goes from door to door. I don't remember just what it was he said about them, but he did bring that in. And then his last sentence was that the office sends men down there every day, and he has men coming into his office every day, and he interviews them, that want the Chevron stations. That's about all I remember of it.

Mr. Somerville: That will be all.

Mr. Hall: That is all.

The Court: Step down.

Mr. Somerville: You may be excused, Mr. Carey. Thank [fols. 1416-1418] you.

Mr. Dixon: May it please the court. If we may adjourn at this time, I will guarantee to close the government's case tomorrow morning.

The Court: I want to say that I am not going to allow any more witnesses to testify as to the same meeting. We don't have to have everybody who was there. I think we have had three persons testify already. If you have any more witnesses on that, I will not allow it.

Mr. Somerville: That is all we have, your Honor.

Mr. Hall: Now, if the court please, it appears from the testimony of the last two witnesses, compared with the testimony of Eugene V. Paridy, that the only part of Mr. Paridy's testimony which is corroborated is that which relates to the dinner held on Market Street in February or March, 1948. I, therefore, move that all of the testimony

of Mr. Paridy except that relating to the events of the dinner meeting be stricken.

The Court: I will grant the motion. I don't think at this stage we should receive testimony of witnesses whose names were not disclosed, unless that be corroborated, and, therefore, the motion will be granted as to the portion designated by Mr. Hall.

Very well, gentlemen, tomorrow morning at 10:00 o'clock.

(Whereupon at 5:20 o'clock p.m. an adjournment was taken until 10:00 o'clock a.m., May 20, 1948.)

[fol. 1419] IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Leon R. Yankwich, Judge Presiding

No. 6159-Y-Civil

UNITED STATES OF AMERICA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., Defendants

Reporters' Transcript of Proceedings

Los Angeles, California,
Thursday, May 20, 1948.

Appearances:
(As heretofore noted.)

[fol. 1420]

Los Angeles, California,
Thursday, May 20, 1948, 10:00 a.m.

Mr. Dixon: May it please the court, the Government asks that the answer of the defendants to supplemental interrogatory No. 4, part 2, the same being a compilation indicating the total sales by the Standard Oil Company of gasoline to retail or independent operated outlets for the years 1936 through 1946, inclusive, be marked for identification.

The Clerk: Government 99 marked for identification.

Mr. Dixon: The Government asks that the answer of the defendants to supplemental interrogatory No. 4, part 3, the same being a compilation indicating the total gross quantities of automotive lubricating oils sold to dealers or independent operators of retail outlets for such products for the years 1936 through 1946, inclusive, be marked for identification.

The Clerk: Government Exhibit 100 for identification.

Mr. Hall: I think, in further explanation, that you should state, Mr. Dixon, that these schedules do not show quantities sold to Standard Oil stations, that is, to company operated stations.

Mr. Dixon: Yes.

Mr. Hall: But they cover, as I understand, quantities sold to the independent dealers handling Standard products.

[fol. 1421] Mr. Dixon: In other words, they are retail outlets other than company operated stations.

Mr. Hall: That is right.

Mr. Dixon: The Government asks that lease form of the Standard Oil Company of California "S-450" covering "(Vacant Site)" be marked for identification.

The Clerk: Government's 101 for identification.

Mr. Dixon: The Government asks that Standard Oil lease form "S-450-1" covering "(Existing Station)" be marked for identification.

The Clerk: Government's 102 for identification.

Mr. Dixon: The Government asks that Standard Oil Company of California lease form "S-450-2" covering "(Lessor Built Station)" be marked for identification.

The Clerk: Government's 103 for identification.

Mr. Dixon: The Government offers Government's Exhibits Nos. 98, 99, 100, 101, 102, and 103 into evidence.

Mr. Hall: Defendants object to the documents marked as Exhibit 98 on the ground that each and all of the documents included in the offer are irrelevant and immaterial.

The Court: The objection is overruled. They may be admitted and so marked.

The Clerk: Government's Exhibits 98, 99, 100, 101, 102, and 103 now admitted in evidence.

Mr. Dixon: The Government offers as exhibits into [fol. 1422] evidence the exhibits No. 7, No. 8, No. 9, No. 10, No. 11, and No. 12 for identification, in evidence.

Mr. Hall: Is that 7 to 12, inclusive?

Mr. Dixon: That is right.

The Clerk: Admitted, your Honor?

The Court: They may be admitted.

The Clerk: Government's Exhibits 7, 8, 9, 10, 11, and 12 admitted in evidence.

Mr. Dixon: Mr. Daley, take the stand, please.

JAMES E. DALEY, called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: James E. Daley.

The Clerk: D-a-l-e-y? Thank you.

Direct examination.

By Mr. Dixon:

Q. Where do you live, Mr. Daley?

A. At 1223 North Havenhurst, Hollywood 26, California.

Q. By whom are you employed?

A. The Federal Bureau of Investigation.

Q. How long have you been in the employ of the Federal Bureau of Investigation?

A. Since March the 19th, 1934.

Q. And what is your type of work?

[fol. 1423] A. I am an accountant.

Q. And that is the type of work that you have been doing with the Bureau?

A. Yes.

Q. I will hand you, Mr. Daley, what is marked Government's Exhibit 99 and ask you to examine the same, and after you have done so, state to the court, if you can, what the total amount in gallons of gasoline sold to dealers or independent operator outlets for Standard Oil products during the year 1936 was?

Mr. Hall: Pardon me just a minute. That involves simply a computation, does it not, Mr. Dixon?

Mr. Dixon: That is right.

Mr. Hall: Multiplying the figures on 99 by the figure 42?

Mr. Dixon: That is right.

Mr. Hall: No objection.

A. The total gallons of gasoline sold to dealers in 1936 in the seven western states is 169,108,926 gallons.

By Mr. Dixon:

Q. I will hand you Government's Exhibit 9 and ask you if you will examine the same, and after you have done so, whether you can state what the total amount in gallons of gasoline sold to retail dealer outlets for the year 1946 was?

A. The total gallons of gasoline sold to retail dealer [fol. 1424] outlets for the year 1946 was?

A. The total gallons of gasoline sold to retail dealers in 1946 in the seven western states is 268,568,748 gallons.

Q. Still referring to Government's Exhibit 9, will you state to the court, if you can, what the total amount in gallons of the gasoline sold the dealer outlets for the year 1947 was?

A. The total reflects 320,257,350 gallons.

Q. And directing your attention to the gallonage figure which you gave for the year 1946 and assuming that all of such gallons of gasoline were sold to the dealers at a rate of 18 cents a gallon, will you state to the court, if you can, what the total amount in dollars was for the gallonage of gasoline sold to such outlets for the year 1946?

A. $48,342,374.64.

Q. Directing your attention to the figures which you gave for the year 1947, can you and will you state to the court what total amount in dollars was for the gallonage sold to such outlets for the year 1947?

A. Fifty seven million——

Q. That is at 18 cents a gallon?

A. At 18 cents a gallon, $57,646,323.

Q. Directing your attention to the amount of gasoline [fol. 1425] in gallons which was sold to the dealers for the year 1936 and also directing your attention to the amount of gallons sold to the dealers in 1946, can you state to the court by comparing such figures of from such figures what the percentage of increase in such sales to dealer outlets was in 1946 over the year 1936?

A. 58.8 per cent increase.

Q. Directing your attention to the same figures and comparison of such figures for the year 1947, will you state to the court what the percentage increase of sales was for that year as against the sales to dealers for the year 1936?

A. 89.4 per cent.

Q. I will hand you Government's Exhibit 100 in evidence and ask you to examine the same and state, if you can after examining that exhibit, what the total amount in gallons of lubricating oils sold to dealers for the year 1936 by the Standard Oil Company was?

A. 3,724,476 gallons.

Q. Again handing you Government's Exhibit 9, I will ask you to examine the same and state, if you can, what the total amount in gallons of lubricating oils sold to dealers or operators of independent retail outlets was for the year 1946?

A. 6,067,782 gallons.

[fol. 1426] Q. Again directing your attention to Government's Exhibit 9, can you state how many gallons were sold to such dealers during the year 1947?

A. 6,268,206 gallons.

Q. Now assuming for the purpose of this question and still directing your attention to Government's Exhibit 9, that of the total amount of lubricating oils sold for the year 1946 10 per cent was Zerolene, 35 per cent Penn, 55 per cent RPM, and that such lubricating oils or brands were sold to the dealers at the minimum price range established on that exhibit, or 29 cents a gallon for Zerolene, 66 cents a gallon for Penn, and 50 cents a gallon for RPM, can you state to the court what the total dollar volume was of such sales for all lubricating oils so sold for the year 1946?

A. Yes.

Mr. Hall: Just a minute. No objection.

A. The total is $3,246,263.83.

By Mr. Dixon:

Q. After examining the same exhibit and upon the same assumptions, can you state to the court what the total dollar volume of such sales of lubricating oils was to dealers for the year 1947?

A. $3,353,490.21.

Q. Now directing your attention to Government's Exhibit 100 and Government's Exhibit 9, I will ask you to refer to the same and state to the court, if you can, what [fol. 1427] the percentage of increase in sales of lubricating oils to dealers was from the year 1936 as compared with the sales for the year 1946?

A. There was an increase of 62.9 per cent.

Q. And still referring to such exhibits, can you state to the court what the percentage of increase was in such sales as compared with the year 1936 for the year 1947?

A. 68.3 per cent increase.

Q. Handing you Government's Exhibit 11, I will ask you to examine the same and state to the court, if you can, what the total number of tires were that were shipped to dealers by the Standard Oil Company in the seven western states for the year 1946?

A. 179,462 tires.

Q. And what was the amount of such tires so shipped to dealers for the year 1947?

A. 213,304 tires.

Q. And what was the number of tubes that were shipped to dealers or sold to dealers by the Standard Oil Company for the year 1946 to such outlets in the seven western states?

A. 138,174 tubes.

Q. And what was the total amount of tubes so sold to dealers for the year 1947?

[fol. 1428] A. 197,400 tubes.

Q. Will you give to the court the total of tires and tubes sold to dealers by the Standard Oil Company for the year 1946?

A. 317,636 tires and tubes.

Q. And can you state what the total dollar volume of such sales for the year 1946 is from such exhibit?

A. $2,692,094.

Q. And will you state to the court what the total number of tires and tubes sold to dealers for the Standard Oil Company was for the year 1947?

A. 410,704.

Q. And what was the total dollar volume of such sales for such year?

A. $3,188,301.

Q. By comparing the figures of 1946 with those of 1947 will you state to the court what the percentage of increase, if any, was over the sales for the year 1947 as against the year 1946?

A. In dollar volume it represents an 18.4 per cent increase.

Q. Still directing your attention to Government's Ex-

hibit 11, will you state to the court what the total number of batteries shipped to independent dealer outlets for the Standard Oil Company in the seven western states [fol. 1429] was for the year 1946?

A. 43,078 batteries.

Q. And what was the amount of such batteries shipped to such dealers for the year 1947?

A. 63,126.

Q. And can you give the dollar volume of such sales for batteries for the years 1946 and 1947 from such exhibit?

A. For 1946 the dollar volume for batteries is $352,464; for 1947, $669,829.

Mr. Hall: May I have the answer read, please?

(Answer read by the reporter.)

Mr. Hall: Thank you.

By Mr. Dixon:

Q. By comparing the figures of such sales for the year 1947 with the figure for such sales for the year 1946, will you state to the court what the percentage of increase in such sales in batteries was for the year 1947 over the year 1946?

Mr. Hall: Pardon me a moment. You are now comparing the dollar volume?

Mr. Dixon: Yes.

Mr. Hall: I think your question should so show.

Mr. Dixon: May the question so indicate? I thought it was so understood.

The Court: All right.

A. It represents a 90 per cent increase in '47 over [fol. 1430] '46.

By Mr. Dixon:

Q. Again directing your attention to Government's Exhibit 11, will you state to the court what the total number of accessories items was that was shipped or sold to the independent dealers by the Standard Oil Company in the year 1946?

A. 2,375,162.

Q. And what was the dollar volume of such shipments or sales?

A. $687,557.

Q. And what was the total number of accessories so shipped or sold to dealers for the year 1947?

A. 2,526,114.

Q. And what was the dollar volume of such sales for such year?

A. $988,469.

Q. By comparing the dollar volume of such sales for the year 1947 with those of '46, will you state to the court what percentage of increase in such sales was for the year 1947 over the year 1946?

A. It represents a 43.8 per cent increase.

Q. Now will you state to the court, if you can, what the total dollar volume of tires, tubes, batteries, and accessories is that was sold to the dealers by the Standard Oil Company for the year 1946?

[fol. 1431] A. $3,732,115.

Q. And what was the total dollar volume for such sales of the tires, tubes, batteries, and accessories for the year 1947?

A. $4,846,599.

Q. By comparing the sales in dollar volume for the year 1947 with those for the year 1946, will you state to the court what the total percentage of increase of all the items mentioned was for the year 1947 in sales over the sales for the year 1946?

A. It represents a 29.9 per cent increase.

Mr. Dixon: Thank you. That is all.

Mr. Hall: That is all.

Mr. Dixon: The Government rests, your Honor.

Mr. Hall: Do you desire me to proceed before the recess, your Honor?

The Court: It might be better not to. I presume you will probably make a motion to dismiss. So as not to break the continuity, I will take a recess now. We will take a short recess and then I will hear the motion and whatever presentation you wish to make.

(Short recess.)

[fol. 1432] The Court: I am sorry, gentlemen, but Judge Harrison came in for a conference. You know he has been away, down in San Diego, and it was necessary to consult

with him about some cases, and it took longer than I thought.

You may proceed.

OPENING STATEMENT ON BEHALF OF DEFENDANTS

Mr. Hall: Before calling our witnesses, if the court please, I would like to make a very brief opening statement as to what we expect to show, and it will be very brief.

Defendants expect to show in a comprehensive way the competitive factor in the seven western states as it affects the retail marketing operations of Standard, a factor which we believe will demonstrate that Standard has for years past and is now operating in the face of powerful and aggressive competition; and we expect to show the result of that competition upon Standard's retail operations in gasoline, in lubricating oil, and in tires, batteries, and accessories.

We also expect to show that the contracts attacked by the government in this case are nothing new, that substantially similar marketing practices have been generally in vogue for many years, induced by the competitive situation to which I have referred.

Believing that the public interest is a factor of paramount importance in this case, we expect to show how the practices of Standard serve that public interest, and what Standard does to enable dealers in its products to serve [fol. 1433] the public interest.

And, finally, your Honor, in order to make clear the inequity of what the government is here attempting, as well as to make clear the injury to the public as well as dealers, if the government has its way, we expect to show what will happen to dealers and the public in the event that the distribution system which the government seeks to inaugurate is forced upon the community.

I will call as my first witness Mr. Edward P. McCall.

EDWARD P. MCCALL, called as a witness by the defendants, being first duly sworn, testified as follows:

The Clerk: Take the stand, please, sir. What is your name, please?

The Witness: Edward P. McCall.

The Clerk: Edward P. M-c——

The Witness: M-c-C-a-l-l.

Mr. Hall: I will ask that a schedule containing four questions and certain subdivisions be marked as Defendants' Exhibit, for identification, next in order.

The Clerk: Defendants' Exhibit B.

Direct examination.

By Mr. Hall:

Q. What is your occupation, Mr. McCall?

[fol. 1434] A. I am assistant to the vice-president at Tide Water Associated Oil Company.

Q. How long have you been connected with the Tide Water Associated Oil Company?

A. Twenty years.

Q. Do you recall that several weeks or possibly months ago I made inquiry of Tide Water Associated, an inquiry which is referred to in the exhibit which has just been marked Defendants' Exhibit B, for identification?

A. Yes.

Q. In response to that inquiry did you give me certain computations?

A. Yes.

Mr. Hall: I ask that a schedule entitled "Tide Water Associated Oil Company Sales Statistics, Year 1941" be marked as our exhibit, for identification, next in order.

The Clerk: Defendants' Exhibit C, marked for identification.

Mr. Hall: And I ask that a schedule entitled "Tide Water Associated Oil Company Sales Statistics, Year 1946" be marked as our exhibit, for identification, next in order.

The Clerk: Defendants' Exhibit D, for identification.

Mr. Hall: Probably I was in error in referring to these as computations. I think they should be more properly referred to in the record as compilations.

By Mr. Hall:

[fol. 1435] Q. Mr. McCall, I show you the papers which have been marked Defendants' Exhibits C, for identification, and D, for identification, and ask you if those schedules were prepared under your supervision.

A. Yes.

Q. Do they correctly reflect the matters stated therein?

A. Yes, they are taken from the official records of the company.

Mr. Hall: I offer in evidence the documents which have been marked Defendants' Exhibits C and D, for identification.

Mr. Dixon: The government objects to the introduction of such evidence on the ground they are irrelevant and immaterial to the issues of this case.

I might say that Mr. Hall and I have discussed the matter of the original records being available to the government, on which these compilations are based, and we have not required that they bring those records into court, but we might want to check some of these figures, assuming your Honor feels they are relevant and material. So subject to that reservation we object to these on the ground of competency, but only for the reasons that I have mentioned, and not for the purpose of requiring the witness or his company to bring the records on which the compilation is based into court at this time.

[fol. 1436] The Court: Mr. Hall, do you want to say anything?

Mr. Hall: I think the relevancy and materiality are perfectly clear under the pleadings and the issues in this case, if the court please. It will appear from the evidence, your Honor, that this company is a competitor of the defendant, and a prominent competitor of the defendant, and the defendants' position among its competitors certainly is an issue in the case. Under Section 3 of the Act, one of the questions is whether competition has been substantially lessened, and I am satisfied from your Honor's remarks in the record heretofore during the case that your Honor is not going to shut out the showing of the competitive background which these schedules and other schedules of similar character will depict.

The Court: So that there will be an understanding of my view of the matter, I will make this statement: The Supreme Court has said repeatedly that a mere economic advantage is not a defense to an action of this character. They have said, for instance, that if prices are fixed even at a low level, in dealing with price-fixing, with which this case is not concerned, there is violation just the same. In

other words, if fixed at the maximum or minimum, it doesn't make any difference, that the law prohibits the doing of the act, and the mere fact that but for that there would be ruinous competition is not a defense. The recent [fol. 1437] cases have not modified that attitude, because throughout the history of this legislation, and the litigation around it, in various forms attempts have been made to show that the practices that were adopted were motivated by a desire to benefit the public. But the court has held if they are of a type which legally is prohibited by the statute, whether dealing with price control or interference with the flow of commerce, that the wisdom, the economic wisdom, of the policy does not excuse it.

That is my understanding of the law, which the recent decisions have not changed in any respect. I may say that I have studied very carefully the recent decisions. I even went so far as to study an article in the Harvard Law Review, which I saw when it was published, but in connection with which great significance didn't occur to me at the time; but it was brought home to me when I noticed Mr. Justice Rutledge referred to it in note No. 10 in the decision of the Sugar case. The article referred to is called, "The Commerce Clause and the National Economy," published in two issues of the Harvard Law Review, 59 Harvard Law Review, 545-883; a recent article to which reference was made. However, I think that under the charges here there is need for inquiry into the extent of the restriction. Under the Sherman Act the restriction must be unreasonable. That requirement generally does not ap- [fol. 1438] ply to the Clayton Act, because the Clayton Act forbids an act which may result in restraint, and the wording of the recent Sugar case is that the word "may" encompasses not only probabilities, as the previous decisions held, but possibilities. So that I believe that the entire picture of the industry is material, because unless we see these acts in the configuration which they occupy in the field in these western states, we cannot form an intelligent opinion as to the effect of these practices upon the free flow of products into the area through the practice of control of outlets.

I thought I would make this statement and give my view of the matter. There was no occasion for making a similar statement before, although, of course, I anticipated that

the matter would come up and intended to make a statement at the proper time, so that counsel will understand my attitude in the matter as a basis for any argument that may be presented either now or at later stages of the case.

With that statement I will overrule the objection, and these compilations which have been marked Defendants' Exhibits C and D—let me see. What was Exhibit B? Has B been offered.

Mr. Hall: B was the inquiry that I addressed to the companies, your Honor. I haven't offered that.

The Court: Oh, you haven't offered that?

Mr. Dixon: Pardon me, your Honor. I would like to state——

[fol. 1439] The Court: Go ahead before I rule.

Mr. Dixon: —I would like to be heard a little further on this matter, if you care to hear it at this time.

The Court: Yes, I will be glad to hear you.

[fol. 1440] Mr. Dixon: Because we do feel that this proffer or line of testimony which is suggested——

The Court: I think you may step down. No use to sit there. You may step down and take an easy chair.

Mr. Dixon: Through this line of inquiry may, of course, undoubtedly will, if continued, lead to the introduction of similar evidence or of this character from the various other oil companies and other groups that are in competition with the Standard Oil Company in this area in the sale of comparable products. However, we feel that under the rulings of the Supreme Court, the facts of this case—and that, of course, is the matter with which we are concerned now—come squarely within the decisions of the court in the Yellow Cab and the International Salt cases.

In other words, the theory of the Government's case here is—and I believe it is clearly stated in the complaint—that these contracts, and there have been some 7,000 of them that are involved in this case that are in use and operation through the seven-state area in which the defendants operate, which serve to completely, if the court please—and I emphasize that word "completely"—exclude that market represented by those outlets from any competition for the products which are sold at that outlet or those outlets.

In other words, there is a complete wall that is set [fol. 1441] up around these outlets by reason of these con-

tracts which prevents any other manufacturer, whether it is Tide Water Associated Oil Company, which the witness now on the stand appears for, or whether it is the Mobil Oil Company, or whether it is the Shell Oil Company or some of the so-called minor oil companies, from competing, if the Court please, for the sale of those products which they sell at these restricted outlets.

In other words, we have here in this case shown, we believe, by the evidence that these outlets have been restricted and the operators of those outlets who are denominated in the contracts, themselves, as independent business men, they are precluded from even purchasing products that are directly competitive with the products which they are handling at that station from any source other than the defendants in this case.

Now, the International Salt case, the Supreme Court, on summary judgment — and there were only some 800 agreements involved in that case with a total amount of commerce of a half a million dollars involved—but the court held that those agreements served to exclude all competition.

The Court: Are you talking of the last decision?

Mr. Dixon: Yes, your Honor.

The Court: On May 3rd?

Mr. Dixon: I am talking about the one that is reported [fol. 1442] in 332 U. S. at page 392, the International Salt Company, Inc.

The Court: There are two of them.

Mr. Dixon: Yes. Well, the other was the Morton Salt case, I believe, your Honor. That was a decision from an appeal from the Federal Trade Commission ruling.

The Court: Just a moment. What page have you?

Mr. Dixon: 392, your Honor.

The Court: 332, 392.

Mr. Dixon: 392. It is in the preliminary print volume.

The Court: Yes; I have them here. Volume 3, isn't it?

Mr. Dixon: That is right; No. 3.

The Court: Oh, I have it marked here. That is right; it is right here. Yes; I have that.

Mr. Dixon: And the Supreme Court stated on page 398 of its opinion that:

> "it is admitted that, at times, at least, competitors do offer such a product",

namely, salt to the people or the individuals or companies that were parties and bound by these restrictive agreements that were involved in the Salt case, the International Salt case.

The court says, however, quoting:

> "They are, however, shut out of the market by a [fol. 1443] provision that limits it, not in terms of quality but in terms of a particular vendor."

I submit, your Honor, that if ever there was a case on all fours in the books that is comparable to a case that is in trial, the decision in this case, I submit, is of that character, because the agreements here do not limit competition on the basis of quality at all; they limit it solely on the basis of the vendor, if the court please, because these contracts prevent these dealers from purchasing any of the products that they sell at these outlets from anyone other than the vendor, the Standard Oil Company, or its wholly owned subsidiary, Standard Stations, Inc.

Now, it is the complete exclusion of all competition by that type of a contract that is the vice of the contract and which is in and of itself, we submit, violative per se, not only of the Clayton Act, but of the Sherman Act as well; and the Supreme Court, we believe, so held in that International Salt case.

And then, further language at 396, where it is said:

> "By contracting to close this market for salt against competition, International has engaged in a restraint of trade for which its patents afford no immunity from the Anti-Trust Laws."

In the Salt case they were endeavoring to justify this exclusive practice on the theory that it was justified [fol. 1444] under the patents; and, of course, the court held the patents no justification for the restricting of this market from all competition and the closing of that market to all competition.

And then it proceeds on page 396 to say:

> "Under the law, agreements are forbidden which 'tend to create a monopoly,' and it is immaterial that the tendency is a creeping one rather than one that proceeds at full gallop; nor does the law await ar-

rivals at the goal before condemning the direction of the movement."

Now, that is important, if the court please, under the Clayton Act where, as your Honor has already pointed out in the recent decision of the Morton Salt case, the Supreme Court held that under the Robinson-Patman Act—and that was the Act that was involved in the Morton Salt case, but the principle is substantially the same under the Clayton Act and so far as application is concerned—that any agreement which even tends to promote a monopoly or has the possibility, as distinguished from a probability, even, is in violation of the Robinson-Patman Act; and, of course, it would be also in violation, assuming the facts were such as to bring it within the Clayton Act, of the Clayton Act as well.

So that on the Salt case and the language of the [fol. 1445] Supreme Court, we submit that regardless of whether there are other competitors of Standard Oil Company in the seven western states that are engaged in the similar practices or are engaged in selling petroleum products, that it is no justification in any sense of the term for the defendants in this case from blocking off—and that is precisely what these agreements have done—from blocking off all competition—not part, but all competition—and all possibility of any competition for the business of these independent business men in the some 6,000 or more outlets that are involved and subject to these contracts.

Now, proceeding further, we can take the language of the Supreme Court in the Yellow Cab case; and that is reported, your Honor, in 332 U. S. I am sure your Honor is familiar with that decision.

The Court: I have all these before me here.

Mr. Dixon: Yes. I direct your Honor's attention to the language of the court on page 225 of the opinion, under the paragraph or heading No. I, in which the court again points out that the agreements involved in the Yellow Cab case precluded all interstate sales and shipments between each individual Yellow Cab operating company and manufacturers other than the defendants located in other states; and that that was sufficient to make the action and the conduct of the defendants in that case a violation of the Sherman Act. The Clayton Act was not involved in that

[fol. 1446] case, your Honor, but that was a Sherman Act violation case.

And that was on a motion to dismiss the complaint of the Government on the ground that it did not state a cause of action; so the facts were naturally all conceded and the court had no factual question before it.

But, applying the language of the Yellow Cab case; not only on page 225 but various other portions of the decision, on pages 226 and 227 as well, I believe it is clear that these contracts here, paraphrasing from the language of 225, "precluding all interstate sales and shipments between each," Chevron Operator "and manufacturers" other than the Standard Oil Company "located in other states."

And then may we add: That were manufacturing and selling products comparable to those sold to these restricted outlets by the Standard Oil Company under these agreements.

So, on the basis of the language of those two decisions, we feel that this type of testimony, namely, whether other oil companies are or are not following the same type of practice of the Standard Oil Company here or whether they are or are not in competition with Standard Oil Company is immaterial.

We say that certainly the record in this case shows that Standard is the largest seller of petroleum products in this area. And, of course, there are other companies that are selling, and it is those companies that are excluded [fol. 1447] from this market, and evidence that they are in business in competition with the Standard Oil Company, particularly as offered by the defendants, we submit would be of little materiality or aid to the court in determining the legality of these contracts.

The Court: All right.

Mr. Hall: I call your Honor's attention to this in relation to the International Salt case. In the first place, as counsel states, that case went up on a summary judgment, and it will appear from the reports—it is either in the Supreme Court report or in the lower court report—that the showing made by the defendant there was very meager. One of the points that the International Salt Company raised on appeal was that the court should not have determined it upon summary judgment because what was a sub-

stantial lessening of competition was a question of fact. But when the case got to the Supreme Court there was the record, there was the record made in the lower court; so that the Supreme Court of the United States in that case was not saying what the defendant might have introduced in evidence in the lower court. It was taking the record as it was presented. And in the opinion it says: "We think the admitted facts"—"admitted facts," if the court please, "left no genuine issue."

Now, to go a step further: The reason that there was [fol. 1448] no genuine issue upon the admitted facts in that case is, as pointed out in our printed brief, the heart and meat of the International Salt Company case, is in that paragraph which we quote on page 69.

> "The appellant's patents confer a limited monopoly of the invention they reward. From them appellant derives a right to restrain others from making, vending or using the patented machines. But the patents confer no right to restrain use of, or trade in, unpatented salt. By contracting to close this market for salt against competition, International has engaged in a restraint of trade for which its patents afford no immunity from the Anti-Trust Laws."

There is the meat and heart of the International Salt Company case, if the court please, that there was a patent monopoly to start with and that by buying clauses the defendant was enlarging the patent monopoly and extending that patent monopoly to unpatented articles.

Now, your Honor, in the case at bar we do not start with a monopoly of any kind, patent or otherwise; and we submit that we have the right to show, by the competitive situation in which we find ourselves, that there is no monopoly to start with as there is in the International Salt Company case.

[fol. 1449] Counsel is proceeding in this case, not only under the Clayton Act, but under the Sherman Act, and certainly we all know that the pattern under the Sherman Act is exactly the pattern which defendants seek to follow in this case. Authority for that is found in *Standard Oil Co. v. United States*, 283 U. S. 163. There defendants, Standard Oil of Indiana, the Texaco, Standard of New Jersey, and the Gasoline Products Company owned patents

covering gasoline cracking processes. They made certain contracts by which each obtained rights to use the patents of the others, and royalties under the patents were to be divided in certain proportions. A violation of Sections 1 and 2 of the Sherman Act was charged. In the course of the opinion, reading from page 175, the court says:

> "* * * Up to 1920 all cracking plants in the United States were either owned by the Indiana Company alone, or were operated under licenses from it. In 1924 and 1925, after the cross-licensing arrangements were in effect, the four primary defendants owned or licensed, in the aggregate, only 55 per cent of the total cracking capacity, and the remainder was distributed among twenty-one independently owned cracking processes. This development and commercial expansion of competing processes is clear evidence that the con- [fol. 1450] tracts did not concentrate in the hands of the four primary defendants the licensing of patented processes for the production of cracked gasoline. Moreover, the record does not show that after the execution of the agreements there was a decrease of competition among them in licensing other refiners to use their respective processes."

Here, if the court please, there was the clear indication that the competitive setting is a material factor to be considered in these cases.

Take the case of the *United States v. International Harvester Co.*, 274 U. S. 693. There the opinion, reading from page 709, states:

> "We further find that while several of the competitors of the International Company in harvesting machines have retired from business since 1911, some during the period of depression commencing in 1921, these retirements were not due to inability to compete with the International Company, but to other causes for which it was in no way responsible; that the place of these retiring competitors has been taken by other and stronger competitors; and that in 1923 it not only had as many competitors in harvesting machines as in 1911, but competitors of greater strength and com- [fol. 1451] petitive efficiency."

And at a later point it says:

> * * * And the Government's own tabulations show that while in 1919, the year after the consent decree was entered, the International Company sold 66.6 per cent of all the harvesting machines sold in the United States, in 1923 its percentage was only 64.1 per cent. * * *"

Speaking of those percentages, counsel this morning, through his witness Mr. Daley, introduced comparative percentages as they affect our company.

The Court: All right.

Mr. Hall: In *United States v. Standard Oil Company of New Jersey*, 47 Fed. (2d) 288, Judge Kimbrough Stone, speaking for the court, said: "The undisputed facts that competitors, large and small, have increasingly come into this area, extended and expanded their businesses freely and are doing so with increasing force, completely negatives any finding of an attempt at compulsory price control or any such result in the sense of the Anti-Trust Act."

There, your Honor, the question at issue was whether there might be a merger of two large oil companies, or whether that would lessen competition. And that brings us right back to the Clayton Act.

What does the last clause in the Clayton Act really [fol. 1452] mean? Does anybody know, whether the effect of the contract will be to substantially lessen competition or tend to monopoly?

That is the very thing we are trying to prove in this case, that there was no lessening of competition; that our principal competitors waxed and flourished while these contracts were going on.

Doesn't that have a bearing upon the very issue presented by Section 3? Whether that issue was presented in these cases that counsel refers to or not is entirely beside the point. We are offering the factual issue in this case. And, to go a step further, the language says: "Or tend to create a monopoly." Haven't we a right to show by the facts that there was no tendency to create a monopoly by these contracts?

Now, we expect to prove that these contracts have been in force, in operation for quite a considerable number of years. And after all, the proof of the pudding is in the eating. May not the court, sitting as a court of equity, see

what has resulted in actual fact in the seven western states while these contracts have been pursued?

[fol. 1453] The Court: All right, Mr. Dixon.

Mr. Dixon: If the court please, I don't know whether we are zigging or zagging, but I assume since we made the objection we have the right to answer.

The Court: You have the right to answer, yes.

Mr. Dixon: I want to say, your Honor, that we are familiar with 283 U. S. and the other cases cited by counsel for the defendant. They are patent cases involving agreements on pooling patents, as was the case in 283 U. S., the Standard Oil case. The question there was what was the purpose and the object of that combination of agreements, but to pool patents in the industry. This is not, if the court please, a patent case. This is a much stronger case, an a fortiori case to the one in the Salt case, because in that case they were trying to justify the complete exclusion of competition upon the market on the ground it was tied in with the patents. It seems to me where there is no patent involved, and there certainly isn't any in this case, it would be a much stronger case to show the illegality from the point of view of justifying the complete—and I again emphasize that word "complete"—closing of this market to all competition. And that is what we have here, and the difference between counsel for the government and counsel for the defendants arises in the approach to that problem.

The Court: In this case it is not so bad. Usually you [fol. 1454] cite the same cases to support the contrary conclusions.

Mr. Dixon: I think we are at least in accord on this, that counsel cannot get much comfort—that is, counsel for the defendants cannot get much comfort from their position in the language of the Supreme Court in the International Salt case and in the Yellow Cab case. But to close my point, the difference is in the approach to this problem. The government contends that this market is completely closed to all competition by reason of these contracts. The defendants say that that is justified; in other words, they say it is legal under the Sherman and Clayton Acts for them to close a substantial interstate market to all competition on the grounds that it is justified by competition. I submit that is precisely their argument and that their position is

precisely that position, and it falls of its own weight under the language of the cases I have mentioned.

The Court: I have attempted to refer to a trite expression that is sometimes used to illustrate the proposition that persons in disagreement may disagree, although only as to one phase, and be in agreement as to fundamentals. It brings to mind the polite answer of the Frenchman who was called in to arbitrate, as it were, an argument which had taken place between a husband and wife, and being a very polite Frenchman and not desiring to take sides, his answer was, as he put in in French, "Monsieur a raison et [fol. 1455] Madame n'a pas tort," and interpreted he said, "The husband is right and Madam is not so far from wrong."

I would be inclined to hide behind that, but I cannot do so. However, I think this is an important matter and I want to state here my view, not the final view, because, as I said, this is not the type of case where everything which the court or counsel says will receive great publicity, but it is a very important case, although it does not affect the type of industry that lives on glamour. But there is no likelihood that anything I may say now will be misinterpreted in advance of determination of the issues.

What I am doing now is so that counsel may understand the ruling on the admissibility of the testimony, and as is my custom, and the custom of every judge who tries a case of this character, we do not just sit and rule, but we owe to the bar the courtesy of stating the grounds for our decisions, although we are not required by law to do it.

Last week when I was addressing a group of lawyers I chided them for resenting a talkative judge by inducing the attitude and belief that an uncommunicative judge is necessarily a wiser one. That is not true. But with that understanding, that I am not deciding any points that will determine this case, but merely laying down certain rules for the guidance of counsel, I will point out one or two things as to which I may be in agreement with one side or the [fol. 1456] other, and then I will indicate my final ruling.

One of the difficulties which arise in these particular cases is the general difficulties to which I have adverted repeatedly, and other judges have and other students have, and that is in interpreting the commerce clause. The court takes one view when it comes to interpreting the commerce

clause in one group of cases and another view when it comes to interpreting another group of cases.

You will note that in the Sugar case, and by that I mean the last case, the American Crystal Sugar case, the court referred to a case which I referred to earlier in the discussion, because I happened to be one of the judges in the three-judge court which decided that case, and I happened to be the minority judge, whose views were later on sustained by the Supreme Court. I refer to the Brown case, that is, the raisin control case. You will note that that case was called to the attention of the Court, and, incidentally it was chiefly upon that case that Judge Harrison based his ruling that contracts between growers establishing conditions for the growing of beets in the market prior to the beets being transported for refining were not within interstate commerce. In the raisin case we had the identical situation. The question there was whether the State of California from the time the raisins were picked and were placed in the drying boxes entered interstate commerce, [fol. 1457] that is, the process of their being transported to the packers and being processed to the extent of being destemmed and cleaned, and, in other words, made more edible. I did say that, in my opinion, I thought they were not edible, only to have a lot of the local growers raise a terrible fuss because they said that you can eat them then without harm to yourself; but what I meant was that they were not commercially edible, that is, you do not sell them as you take them out of the drying boxes. The court established a twilight zone and said that during that period, from the time they leave the grower's place and actually were processed for interstate commerce the State of California had a right to control them. And that was my view. The view of Judge Stevens and Judge Beaumont, who wrote the majority opinion of the three-judge court, was that it was interstate commerce. When the case went to the Supreme Court on direct appeal, as happens in those three-judge cases, the Supreme Court adopted the minority view of the case.

In the American Crystal Sugar case, which I have just called the Sugar case, they distinguish that point, and once more illustrate the proposition that I referred to, that whether a certain set of facts are in the flow of commerce or not or will interfere with commerce cannot be estab-

lished by any abstract or absolute criterion. It depends upon the situation with which the court is dealing. The [fol. 1458] court may say one thing when it is dealing with the power of the state to tax or control commodities, as is illustrated in the raisin case, and as is illustrated also in the telephone cases and in the railroad tie cases, where the power of the state to tax these instrumentalities was in question, although it was conceded that they were not intended for local consumption, but held merely temporarily for shipment in interstate commerce; and the court reaches an entirely different conclusion when it interprets the plenary power of Congress, under the commerce clause, to control interstate commerce.

Now, two things are to be borne in mind. If I agreed with the government that these contracts in themselves, either because of their verbiage—which they contend—or because of the manner in which those concerned have interpreted them amount to a restriction which in itself is illegal per se, there would be no case left, because all I would have to do, at least as to one part of the case, would be merely to interpret the contract. The only thing that would be left would be to contradict some of the oral testimony, and if I held that the contract, by its very language, had the effect of restricting commerce, then I could decline to hear any further testimony by saying that the contract is at least violative of the Sherman Antitrust law, and I do not care to hear any evidence on the Clayton Act, because the relief obtained under one would be broad enough [fol. 1459] to cover what the government contends here.

However, I repeat what I have said before, that under the big manufacturing company cases, the General Motors case, it is still the law, and that is at least under the Clayton Act, that an agreement by a dealer, in consideration of being permitted to deal in a certain product, that he will not sell or offer to sell any other parts or instruments not manufactured by the particular manufacturer, is not per se illegal. The opinion in the General Motors case, which was a big case, is very brief. It is a per curiam opinion, but it states tersely the point. In that case the court had an agreement which not only indirectly forbade as the contracts do here by merely saying that the dealer obligates himself to take from Standard all the dealer's require-

ments, but there was a direct prohibition of sale, and it said:

> "'Dealer agrees that he will not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and chassis second-hand or used parts or any part or parts not manufactured by or authorized by the Chevrolet Motor Company . . .'"

In other words, it eliminated not only parts not manufactured by them, but second-hand and used parts. It was a complete monopoly. And at the same time they said he is not granted exclusive selling rights in genuine new Chev- [fol. 1460] rolet parts and accessories; in other words, indicated that other dealers within the same territory would have the same right. The court dismissed the bill for want of equity, and the decree was affirmed. I have read the decree which affirms it, and in sustaining it the court said:

> ". . . Upon the evidence adduced at the trial the District Court found that the effect of the clause had not been in any way substantially to lessen competition or to create a monopoly in any line of commerce."

In other words, the court says that the effect of the contract is an element in the case; that even when they are confronted with a contract which exclusively shuts out competition, there is still a second element under the Clayton Act, namely, the element of the effect upon competition.

Now, under the Sherman Act the unreasonableness of the restraint since the first Standard Oil case is an element to be considered, and the unreasonableness of that restraint is a question of fact. That is especially true when you are dealing with restraint other than price-fixing. That is why the language in price-fixing cases does not help us very much, because the courts have said that price-fixing per se is a violation of law, and it does not make any difference whether price-fixing is at a maximum or at a minimum, or whether, as I held in the Food and Grocery case, it is [fol. 1461] by formula. When we are dealing with that, the court has said that price-fixing per se is illegal, and for that reason it is immaterial to show whether there is a reasonable or unreasonable restraint.

I want to call attention to the United States v. Socony-Vacuum Oil Company case. It is a very long case and the

paragraph I want to refer to is at page 220. The opinion begins at page 130 of 310 U. S. The paragraph I am going to read applies to both arguments. It sustains the view I expressed that the economic wisdom or unwisdom or the economic benefit or detriment of a policy is not material when we are dealing with a practice such as price-fixing, which is declared to be illegal per se. But at the same time the economic result becomes material if we are dealing with restraint other than price-fixing, a restraint which is monopolistic because there we have to show that there is an unreasonable monopoly under the Sherman Act and a substantial monopoly under the Clayton Act.

The portion of the opinion which I want to read begins at the top of page 220. It is to be borne in mind that one justice has written almost all of these antitrust case opinions in recent years. That is Mr. Justice Douglas, and which indicates that the court or the Chief Justice has assigned these cases to him so that there can be no misunderstanding as to what is meant in each case. Often when [fol. 1462] a different justice writes an opinion the danger is that it lends itself to the argument that perhaps he did not interpret the language in the way in which another justice expressed the views of the court. But when the same justice writes these various opinions there is an assurance that he knew not only what he was talking about, but he knew what he meant by the prior language. In the last case, the American Crystal Sugar case, the opinion was written by Mr. Justice Rutledge, but I think I am correct in saying that most of these opinions were written by Mr. Justice Douglas, that is, those which arose under the Anti-trust law. This is the language:

> "Secondly, the fact that sales on the spot markets were still governed by some competition is of no consequence. For it is indisputable that that competition was restricted through the removal by respondents of a part of the supply which but for the buying programs would have been a factor in determining the going prices on those markets. But the vice of the conspiracy was not merely the restriction of supply of gasoline by removal of a surplus. As we have said, this was a well-organized program. The timing and strategic placement of the buying orders for distress [fol. 1463] gasoline played an important and signifi-

cant role. Buying orders were carefully placed so as to remove the distress gasoline from weak hands. Purchases were timed. Sellers were assigned to the buyers so that regular outlets for distress gasoline would be available. The whole scheme was carefully planned and executed to the end that distress gasoline would not overhang the markets and depress them at any time. And as a result of the payment of fair going market prices a floor was placed and kept under the spot markets. Prices rose and jobbers and consumers in the mid-western area paid more for their gasoline than they would have paid but for the conspiracy."

That is the factual background, and I am just giving you that factual background. Then it goes on:

"Competition was not eliminated from the markets; but it was clearly curtailed, since restriction of the supply of gasoline, the timing and placement of the purchases under the buying programs and the placing of a floor under the spot markets obviously reduced the play of the forces of supply and demand.

"The elimination of so-called competitive evils is no [fol. 1464] legal justification for such buying programs. The elimination of such conditions was sought primarily for its effect on the price structures. Fairer competitive prices, it is claimed resulted when distress gasoline was removed from the market. But such defense is typical of the protestations usually made in price-fixing cases. Ruinous competition, financial disaster, evils of price-cutting and the like appear throughout our history as ostensible justifications for price fixing. If the so-called competitive abuses were to be appraised here, the reasonableness of prices would necessarily become an issue in every price-fixing case. In that event the Sherman Act would soon be emasculated; its philosophy would be supplanted by one which is wholly alien to a system of free competition; it would not be the charter of freedom which its framers intended."

Now, what Mr. Justice Douglas says applies with greater force to a restrictive practice other than price-fixing. In other words, the fact that it was beneficial is not material if it, in effect, was an unreasonable restraint.

Judge Learned Hand made that very point in the Fashion Originators Guild case, *Fashion Originators Guild v. Federal Trade Commission*, 114 Fed. (2d) at page 80. Both [fol. 1465] of you have commented on this case, and I refer to page 84 of the opinion, in which Judge Hand applied the reasoning of the Socony-Vacuum case to a case not involving price-fixing, and with that clarity of language which is so characteristic of his opinions, and which makes him, to my mind, the greatest stylist on any bench anywhere, not excluding the Supreme Court of the United States, he shows that the economic benefits cannot be considered if, in fact, there is substantial restriction of commerce. I read from page 84:

> ". . . Many trade combinations which affect competition are lawful, when they are designed to prevent trade 'abuses'; they are 'reasonable,' though perhaps to say so is no more than to state the problem."

Citing the Appalachian Coal case, and the Sugar Institute case.

> "Certainly it is not true that the lawfulness of every combination depends upon whether it 'reasonably' corrects trade 'abuses'; there are some combinations that nothing will excuse. The accepted rubric for this is that when the means are unlawful per se, the purposes of the confederates will not justify them."

Citing the Sugar Institute case.

> [fol. 1466] "The most recent example of this is the Supreme Court's reaffirmation of the unconditional illegality of price-fixing, in spite of the probability that the combination in fact benefited the industry."

Citing the Socony-Vacuum case.

> "However grave the industrial disorders, that remedy was not permissible; the industry may restore itself by many devices, but not by all.
>
> "The case at bar is not one of price-fixing, and for that reason United States v. Socony-Vacuum Oil Co., supra, does not control, for the members of the Guild are free to compete with each other in price or in any other way they choose. The purpose was not more

than to exclude 'piratical' dressmakers from any share in the market for 'original' designs; all else was left open. Success in that purpose might, or might not, result in an increase in price to the consumer, or in that stabilization of prices which United States v. Socony-Vacuum Oil Company, supra, condemned. Nobody can tell what will be its effect because, although the exclusion of the 'piratical' dressmakers will reduce the supply and price is normally a function of supply, it does not appear that the Guild has not a [fol. 1467] reserve of producing power equal to what it excludes. If so, it may well be able to take up the slack, so to say, created by its efforts, and free competition among the members may keep prices as low and as wayward as they were before. Price-fixing is not, however, the only means unlawful per se. The interest of the consumer is not all that determines the 'reasonableness' of a contract 'in restraint of trade.' It is also unlawful to exclude from the market any of those who supply it—assuming that there is no independent reason by virtue of their conduct to justify their exclusion—and it is no excuse for doing so that their exclusion will result in benefits to consumers, or to the producers who remain."

Then he cites practically every case that has been decided on that question by the higher courts, beginning with the Montague case, the Eastern States Retail Lumber Dealers Association case, the Binderup case, the Anderson v. Shipowners Association case, the Stone Cutters' Association case, the Paramount Famous Corporation case, the First National Pictures case, and those are the Supreme Court cases, and then the National Harness Association case in the Sixth Circuit, the Wholesale Grocers Association in the Fifth Circuit, and the Butterick Publishing Company case [fol. 1468] in the Second Circuit. Then the opinion continues:

"There is another reason supporting this conclusion. A successful combination among a part of the producers to exclude others, even when not accompanied by an agreement fixing prices, puts into their hands collectively the power to control the supply and with it the price. The fact that the power is not at the

moment exercised is no assurance that it may not be; if the effort succeeds and the combination is not disrupted, it may at any time be used, and there will then be no protection to the consumer."

I will read the next paragraph:

"Finally, it is of no consequence that the Guild does not supply the whole market for women's dresses; it aims at a monopoly however small its share of total sales. The reason is as follows. Although all dresses made after one design are fungibles, the different designs themselves are not fungibles. Each has its own attraction for buyers; each is unique, however trifling the basis for preferring it may be. Hence to attempt to gather to oneself all possible reproductions of a given design is to attempt to create a monopoly, as at once [fol. 1469] appears from the fact that a copyright for it—and a fortiori a design patent upon it—would be ranked as a monopoly. It is true that the sanction of that monopoly may be very weak; it depends upon the design's attractions above other designs, often not a very important margin of advantage. But the same is true of nearly all monopolies; for there are substitutes for most goods. As to each design therefore the Guild is seeking to establish a monopoly; and it is unimportant whether its gross sales are large or small, as compared with those of all women's dresses. For these reasons the combination was unlawful per se; the commission was right in refusing to hear any evidence in its excuse, for it could have no excuse; . . ."

Then he refers to the Millinery Creators' case.

fol. 1470] ; To use another expression of Judge Hand's, hich I have adopted and have used myself, recently taken rom him, the gloss of these cases, that is, the teaching of hese cases, is this: That when we are dealing with price-xing we are dealing with a contract which is invalid per e and violative of the Act. When we are dealing with any ther restriction the legality must be determined by the ature of the contract itself. I am of the view that under he decision of the Supreme Court in the General Motors ase a contract by a manufacturer of a product which binds n agent who is used as an outlet to the exclusive use

of its product is not, in itself, a violation of either the Sherman Act or the Clayton Act; but it may be so under the Sherman Act if it results in an unreasonable restraint in trade, and under the Clayton Act if it results, to use the language of the Act, in a monopoly in a line of commerce or lessens competition substantially.

Now, as to the second element of these, this testimony will be admitted, and like testimony, not for the purpose of showing the benefit which the public derived from the competition or that it prevented a glutting of a market, or economic crisis, because that is no concern of the courts. If the Congress of the United States has created a law, which, as interpreted by the Statute, results in economic disadvantage, then the industry can do as other industries are doing—go before [fol. 1471] the Congress and ask themselves to be excluded.

I take notice of the fact that there is pending now before the Congress of the United States a bill, which I think has passed one house—it has passed the House of Representatives—and which would exclude from the operations of the Act, transportation companies, despite the fact that prosecutions and actions of a civil nature against the various transportation companies are actually pending in some eastern courts. I think one is pending in the State of Wisconsin. I think there is also a bill pending before the Congress to overcome the decision rendered last year which declares that insurance is interstate commerce and within the regulatory powers of the Congress.

I am merely giving these illustrations as illustrations to point out that because the higher court's interpretations of the Act have in some instances been considered by some members of industry as detrimental to them and to the public interest, they have called upon the only body that can give them relief, and that is the Congress of the United States. And it is for this reason that the courts in these cases have repeatedly held that they are not going to go into any question of the benefit to be derived from certain practices. They are material only insofar as they go to the issues of fact relating to the particular case, namely, to repeat, [fol. 1472] whether to some party the practices do or do not result in unreasonable restraint of competition, or substantially would have the effect of lessening of competition or creating a monopoly.

And the only difference in the matter of proof of the two is this: That, as to the Sherman Act we have to have

proof of actual result; while under the Clayton Act, the tendency, the effect is also covered.

The object of the Clayton Act was to include contracts which may have the effect, which may not have been carried into execution, and for that reason, either through the courts or through the control of the Federal Trade Commission, power was lodged to prevent the practices. Or, to sum it up, under the Sherman Act the unreasonable restraint must be actual in order to lend itself to action, to restraining action by the court. Under the Clayton Act, the probabilities, the possibilities of its resulting in the actual evils which the Congress reaches are sufficient.

Those, to my mind, are the only two differences which affect the method of proof. And you will note that in the Morton Salt case, which of course was a case on the merits and was a review of the findings of the Commission, the court did not condemn the Federal Trade Commission because it received actual proof of actual losses, although they said that it was not strictly necessary that this be done.

[fol. 1473] I want to read a paragraph from the slip decision, at page 11. I will start with the top here because it speaks again about the effect, and then it speaks of economic result.

> "* * * Since there was evidence sufficient to show that the less-than-carload purchasers might have been handicapped in competing with the more favored carload purchasers by the differential in price established by respondent, the Commission was justified in finding that competition might have thereby been substantially lessened or have been injured within the meaning of the Act.
>
> "Apprehension is expressed in this Court that enforcement of the Commission's order against respondent's continued violations of the Robinson-Patman Act might lead respondent to raise table salt prices to its carload purchasers. Such a conceivable, though, we think, high improvable contingency, could afford us no reason for upsetting the Commission's findings and declining to direct compliance with a statute passed by Congress."

Then they went onto say—this is just only the thought I had in mind. Continuing:

"The Commission here went much further in receiving evidence than the statute requires. It heard testi- [fol. 1474] mony from many witnesses in various parts of the country to show that they had suffered actual financial losses on account of respondent's discriminatory prices. Experts were offered to prove the tendency of injury from such prices. The evidence covers about two thousand pages, largely devoted to this single issue—injury to competition. It would greatly handicap effective enforcement of the Act to require testimony to show that which we believe to be self-evident, namely, that there is a 'reasonable possibility' that competition may be adversely affected by a practice under which manufacturers and producers sell their goods to some customers substantially cheaper than they sell like goods to the competitors of these customers. This showing in itself is sufficient to justify our conclusion that the Commission's findings of injury to competition were adequately supported by evidence."

I pointed out before that some language which is used in reviews of orders of the Federal Trade Commission cannot always be applied to a trial of a case of this character. The same is also true about language which is used in determining the sufficiency of a complaint or an indictment, as distinguished from language which is used in passing upon [fol. 1475] a case upon the merits.

But on this particular topic which I am discussing I have chosen decisions from both fields to show that whether the court is dealing with one situation or with another, the two principles to which I have referred have received full recognition.

I am taking a long time to express these views. You will note I have kept comparatively uncommunicative for a long while, because I felt that a full discussion at the present time will be helpful to counsel in charting the course that evidence is to take and so there will be a place in the record where there is fully expressed the reasons for the ruling I am about to make. And that ruling will be to overrule the objection to the introduction of the two documents.

Mr. Dixon: If the court please, I do not want to unduly argue the point and I am sure your Honor understands that my only purpose is to endeavor to be helpful to the

court on this question, which, as your Honor has stated, is fundamental to the trial of the case because it will undoubtedly take considerable time to put in this type of evidence if it is admissible. I just rise to make a few comments concerning some of these points raised by your Honor.

The Court: Just one minute.

[fol. 1476] Mr. Dixon: Certainly.

The Court: I want to say this: I am passing now just on this. I do not want to have any discussion as to that portion of the opening statement which deals with the effect of this policy during its existence, because that statement was not an offer of proof, was not brought before the court by a question to be elicited from a witness and, therefore, is not before me at the present time. Because the question in my mind arises whether that type of testimony does not come within the inhibition to which I have referred, that it relates to economic policy with which we are not concerned in this case if, in fact, the practices do result in unreasonable restraint or in a monopoly under the two Acts.

So I do not want you to understand what I am saying as being an endorsement of the statement in full which was made by Mr. Hall.

Mr. Dixon: Oh, I see.

The Court: I am merely determining at the present time that computations of this character which show the extent of the sales by competitors in the field are material upon the second issue, as I call it, and for that reason I think there is no further argument necessary at the present time.

If a witness is called to support that part of the opening statement, I will hear you further. What I have tried to do is merely to lay down certain fundamental principles as [fol. 1477] the basis of my ruling. My ruling is limited to the specific thing. When the reasoning I have given is applied or it is sought to apply it to something else, then I will hear you further at that time.

Mr. Dixon: I just wanted to be clear, and I am sure that your Honor understands that I am rising only for that purpose.

The Court: I do not think it is necessary.

Mr. Dixon: I felt from some remarks your Honor had made that perhaps I had been remiss in presenting the position of the Government on the competition that we claim had been restricted. It is not the competition between Standard Oil and these other oil companies. It is the competition

for this market that Standard has with these dealers. That is the only competition that we claim is restricted in any sense of the term, your Honor.

The Court: Oh, yes; I understand that. Your contention is two-fold: That, in the first place, it has the effect of lessening the flow of competitive products into the state as it affects these particular outlets.

Mr. Dixon: That is right, your Honor, precisely. That is right.

The Court: And it is really one contention. In other words, that even though—I am stating the Government's position as I understand it—that even though the other [fol. 1478] suppliers are in the field and through either outlets of their own or through other outlets which are not bound by similar contracts, market a large number of products, there still remains the question whether the restriction prevents these same suppliers from supplying the stations——

Mr. Dixon: That is right.

The Court: Which the Standard—I would not say "controls"——

Mr. Dixon: The 6,000 stations.

The Court: —influences; let us use that word, "influences".

Mr. Dixon: I see your Honor understands our position on that point.

Now, just two other thoughts here in connection with reference to decisions by Justice Douglas which confirms our position.

Mr. Hall: If he keeps on speaking, I want to reply, your Honor.

Mr. Dixon: I will be very brief, your Honor, I assure you.

The Court: All right.

Mr. Dixon: In the Griffith case, of which your Honor has the slip decision or opinion, decided May 3rd, Justice Douglas, if there was ever any question about it, goes along with our position here.

[fol. 1479] The Court: That is the other case?

Mr. Dixon: That is right.

The Court: Yes, I have it.

Mr. Dixon: On page 7, your Honor:

"* * * It is indeed 'unreasonable per se, to foreclose competitors from any substantial market.'"

That is, in other words, citing International Salt case previously decided.

Now, that was Justice Douglas' adoption and reaffirmance and expression, if necessary, of this doctrine, that we contend applies here to the facts, namely, these contracts, the contracts of the 6,000 stations affected by that.

Just a word or two about the Pick case which your Honor has mentioned. That decision, written by Judge Lindley, a very able Judge who has decided many anti-trust cases, including the General Motors case—I do not mean *General Motors v. Pick*, but also another General Motors case.

The Court: The one involving the finances?

Mr. Dixon: That is right.

The Court: I know.

Mr. Dixon: And the Great Atlantic and Pacific Tea Co. case, as well as some others. That decision was referred to and cited by the defendants in the International Salt case, your Honor, before Judge Rifkin in the District Court, and it is interesting to note in passing what Judge Rifkin said [fol. 1480] about that decision, as well as the Sinclair decision which is also cited by the defendants as justification for this type of contract. Judge Rifkin's opinion is reported, if your Honor is interested, in 6 Federal Rules, Decision 302.

He states in his opinion that it is true that the holding of the Sinclair——

The Court: What page are you reading from?

Mr. Dixon: I am reading from Judge Rifkin's opinion.

The Court: What page of the report?

Mr. Dixon: I am sorry. I do not have the precise page.

The Court: What is the number?

Mr. Dixon: It is 6 Federal Rules, Decision 302.

The Court: Just a moment.

Mr. Dixon: I mention this decision, your Honor, because it was the ruling of the court in the District Court in the Salt case and the cases which your Honor has mentioned were relied upon and cited by the defendants in that case in the District Court, namely, the Federal Trade Commission, the Fashion Guild case which your Honor mentioned sometime ago in the course of your discussion of the matter. But in this opinion Judge Rifkin, in the International Salt case, points out that the Pick case and the Sinclair case had been severely restricted, as he puts it. And your Honor will also find, by referring to the General Motors

[fol. 1481] Acceptance case on appeal, where the Pick case was again referred to, that the Circuit Court in considering the appeal in that case severely restricted the Pick with the facts of that particular case before it. So that when it reached the Supreme Court the matter was necessarily before it and while, of course, the Pick decision was a per curiam decision, if it had any effect on the Supreme Court on the facts in the Salt case, it would certainly have been referred to, but it was not even referred to in the decision of the Supreme Court in the International Salt case.

The Court: All right.

Mr. Dixon: Also, as I have pointed out, the Pick case was referred to in the General Motors decision that I have mentioned. I give you those references, your Honor, only so that if you care to, you may refer to those decisions which your Honor has not yet perhaps had time.

The Court: Yes; I have read them. 1946. I am familiar with that. It came out almost a year ago.

Mr. Dixon: The General Motors decision, your Honor, do you have that citation?

The Court: Yes; I have. All right; are you finished?

Mr. Dixon: Yes; I am except for that citation. Thank you very much.

[fol. 1482] The Court: We are still at cross purposes in one respect. I still insist that language which the court uses in deciding on the face of the record without any testimony does not necessarily apply to the case which is before the court. I am familiar with Judge Rifkin's decision and the decision was on a summary judgment. Therefore, all the allegations of the complaint and all the inferences that could be drawn were drawn favorably to the allegations of the complaint. For that reason the language cannot necessarily be applied to cases like the present one, where we are concerned with the problem of whether facts in the record have any of the effects prohibited by the two statutes.

There is another stronger reason for not applying them, because I am dealing now merely with the question as to whether certain testimony should be received. That one paragraph in Justice Douglas' opinion must be read in the context, and the context really shows that their effect is a question of fact, and the paragraph which Mr. Dixon read occurs on page 7 of the slip decision, and reads as follows:

". . . It is indeed unreasonable, per se to foreclose competitors from any substantial market.' ".

That is quoting from *International Salt Co.* v. *United States*, 332 U. S. 392, 396.

[fol. 1483] But you cannot wrest a sentence from its context. That is a phrase which should be familiar to Mr. Hall because that is one you run into in the law of libel, where one takes ahold of one phrase and takes it out of the context and tries to use it, and the reason why that is dangerous is because the next paragraph may contain the antidote, or, as we say in the law on libel, one paragraph may be the poison and the other may be the antidote to the poison. I myself wrote an opinion which was sustained by the Supreme Court, a case against the Los Angeles Examiner in which I think Mr. Hall was one of counsel, in which I held that where a certain phrase in a document can have a libelous meaning, yet the whole document may show that the meaning is other than stated; in other words, that where a subsequent paragraph takes the sting out of the statement by saying that the allegations were found by the court to be untrue, the whole article must be read and the article declared not libelous. That is also true when you come to apply the reasoning of the court to the particular situation, so I want to read the entire paragraph. It states:

"Anyone who owns and operates the single theatre in a town, or who acquires the exclusive right to exhibit a film, has a monopoly in the popular sense but he usually does not violate section 2 of the Sherman Act [fol. 1484] unless he has acquired or maintained his strategic position, or sought to expand his monopoly, or expanded it by means of those restraints of trade which are cognizable under section 1. For those things which are condemned by section 2 are in large measure merely the end products of conduct which violates section 1."

Citing *Standard Oil Co.* v. *United States*, 221 U. S. 1, 61.

"But that is not always true. Section 1 covers contracts, combinations, or conspiracies in restraint of trade. Section 2 is not restricted to conspiracies or combinations to monopolize but also makes it a crime for any person to monopolize or to attempt to monopo-

lize or to attempt to monopolize any part of interstate or foreign trade or commerce. So it is that monopoly power, whether lawfully or unlawfully acquired, may itself constitute an evil and stand condemned under Section 2, even though it remains unexercised. For Section 2 of the Act is aimed inter alia, at the acquisition or retention of effective market control."

Citing United States v. Aluminum Co. of America, 148 Fed. (2d) 416,

"Hence the existence of power 'to exclude competition [fol. 1485] when it is desired to do so' is itself a violation of Section 2,"—

Now, if I stop there, you see, my reading of it would not in any way deviate from your interpretation, but there is a proviso which follows, and it is one of those things which Theodore Roosevelt used to call "weasel words." I hate commas, and I think we all love periods. A man who says, "I believe so-and-so, but,"—I say he should stop before the "but" because as soon as he explains that qualification he shows he doesn't believe it. It continues:

"—provided it is coupled with the purpose or intent to exercise that power."

Again bringing out the point that I made that the effect of the power is important under the Sherman Act, not merely its tendencies.

"It is indeed 'unreasonable, per se, to foreclose competitors from any substantial market.'"

Citing the International Salt Co. v. United States case.

"The anti-trust laws are as much violated by the prevention of competition as by its destruction."

Again citing the Aluminum Company case.

"It follows a fortiori that the use of monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor, is unlawful."

[fol. 1486] But whether such is the use is a question of fact under both statutes.

For that reason my statement stands. With that we will take our recess. We have consumed most of the noon hour, so I think I will give you a recess until 3:00 o'clock. It is nearly 1:30 now.

The Clerk: Exhibits C and D in evidence.

The Court: Very well, gentlemen. 3:00 o'clock.

(Whereupon, at 1:25 o'clock p. m. a recess was taken until 3:00 o'clock p. m. of the same day.)

[fol. 1487] Los Angeles, California, Thursday, May 20, 1948. 3:00 P. M.

The Court: All right, gentlemen, proceed.

Edward P. McCall, called as a witness by the defendants, having been previously sworn, resumed the stand and testified as follows:

Direct examination (Continued).

Mr. Hall: The defendants offer in evidence Exhibit B, for identification. That is for the purpose of explaining the schedules, since those were the questions propounded with respect to which the schedules were prepared.

Mr. Dixon: Objected to on the ground that the evidence should come from the witness himself, your Honor, rather than in that manner. I mean, there are some questions there that are perhaps a little ambiguous.

The Court: I think these questions should be propounded again. Then if you want to present this later on as a summary, it is all right.

Mr. Hall: Those were the actual questions propounded, and I thought I was doing counsel a favor when I produced this, in order to enable him to cross-examine.

The Court: Is that a complete answer on the exhibits you have already produced?

[fol. 1488] Mr. Hall: No, the answers are not complete, but it seems to me that would be for counsel to develop by cross-examination.

The Court: Perhaps I did not make myself clear. What I meant to say was that Exhibits C and D were given to you in response to this?

Mr. Hall: Yes. They are really a part of the same.

The Court: Then I will allow you to ask the question as to whether the exhibits were produced in response to this.

Mr. Hall: He has already testified to that.

The Court: Then I will overrule the objection and allow this to be introduced in evidence, merely showing the action which called for these tabulations. You are not bound by the results, nor by the questions. Overruled. It may be received for the purpose indicated.

The Clerk: Defendants' Exhibit B in evidence.

By Mr. Hall:

Q. Is Tide Water Associated gasoline sold through independent dealers, Mr. McCall?

A. Yes.

Q. Is the same thing true with respect to lubricating oil?

A. Yes.

Q. And with respect to tires, tubes and batteries?

A. Yes.

[fol. 1489] Q. And other automotive accessories?

A. Yes.

Mr. Dixon: Pardon me, Mr. Hall. May the record show the objection of the government to this line of questioning?

The Court: Yes. We will call that Government's objection—

Mr. Dixon: No. 1.

The Court: No. 1, so that we will have a standard objection.

By Mr. Hall:

Q. Now, are the products which I have referred to sold by those independent dealers in the states of California, Oregon, Washington, Arizona, Nevada, Utah and Idaho in competition with Standard Oil Company of California's products or the products sold at the dealer stations of Standard Oil Company of California?

A. I would answer that question this way, Mr. Hall, that we sell in all those seven states—

Mr. Dixon: Pardon me. Government's Objection No. 1, your Honor.

The Court: Yes. Overruled.

The Witness: We sell in all those seven states. I don't know, for example, if Standard sells in Utah. If you sell

in all the seven states, then we compete with you in all the seven states.

The Court: That is a good answer.

[fol. 1490] Mr. Hall: I would ask that there be marked as one exhibit, for identification, with Defendants' number next in order Tide Water Associated forms No. 4580-D and 4603-E.

The Clerk: Defendant's Exhibit E, marked for identification.

The Court: May I just see that, to see if that is the same thing?

Mr. Hall: I ask that there be marked as one exhibit with Defendants' letter next in order Tide Water Associated forms 4694-G, 4468-H and 4604-E.

The Clerk: Defendants' Exhibit F, marked for identification.

By Mr. Hall:

Q. Does Tide Water Associated lease service station properties to independent dealers?

A. Yes.

Q. And that is true in each of the states that I have referred to in the previous question?

Mr. Dixon: If the court please, so that I won't have to make the objection again, may the record show a continuing objection?

The Court: Yes, it may be understood that the objection of the government applies to all of these documents which aim to show similar practices on the part of the oil company which this witness represents.

The Witness: That would be true as to all states except [fol. 1491] Utah. As to Utah, we don't lease there because we operate through distributors.

By Mr. Hall:

Q. I show you the documents which have been marked Defendants' Exhibit E, for identification, and ask you if those are forms of lease from Tide Water Associated to independent dealers——

A. Yes, sir.

Q. —commonly and currently in use?

A. Yes.

Q. Have forms like those or substantially like those been in use for some time?

A. Yes.

Q. How many years would you say, or can you give an answer to that?

A. I would say more than 10 years.

Mr. Hall: Defendants offer in evidence Exhibit E, heretofore marked for identification.

Mr. Dixon: A continuing objection No. 1, your Honor.

The Court: Overruled.

The Clerk: Exhibit E in evidence.

By Mr. Hall:

Q. Does Tide Water Associated make agreements with independent dealers who handle the products of Tide Water Associated at their stations?

A. Yes.

Q. I show you the documents heretofore marked, for [fol. 1492] identification, as Exhibit F, and ask you if those are forms of agreement which Tide Water Associated makes with independent dealers?

A. Yes.

Q. Those are commonly and currently in use, are they?

A. That's right.

Q. In every state but Utah?

A. In every state but Utah.

Q. Have forms like those, or substantially like those, been in use for some years?

A. Yes.

Q. Would you say for 10 years or more?

A. Probably not 10 years on that merchandise agreement, but I would say seven years.

Q. Would you say that as to the agreements other than the merchandise agreement, the agreements like those dealer sales agreements and petroleum products sales agreements, they had been in use for 10 years?

A. Yes.

Mr. Hall: Defendants offer in evidence Exhibit F, heretofore marked for identification.

Mr. Dixon: The same objection No. 1, your Honor.

The Court: Overruled.

The Clerk: F in evidence.

Mr. Hall: Take the witness.

[fol. 1433] Cross-examination.

By Mr. Dixon:

Q. Mr. McCall, I noted from your Exhibit D that Tide Water Associated only operates six service stations itself in the seven states mentioned, is that correct?

A. That's right. That was in 1946.

Q. Well, that is what is set forth in your Exhibit D?

A. Yes, that is D.

Q. Is that correct?

A. Yes.

Q. Do you know how many company-operated stations, that is, service stations, Standard Oil of California has in these seven states?

A. No.

Q. If it should appear to be the fact that Standard Oil Company had over a thousand company-operated stations, would you say that your six company-operated service stations were in competition with their operated service stations?

A. In a limited extent those six are in competition with their over a thousand.

Q. Now, Mr. McCall, does your company ever endeavor to sell any gasoline to any Chevron dealer-operated stations? Do you know what I mean by a Chevron dealer-operated station?

A. I believe I understand the term.

Q. Does your company solicit the business of selling [fol. 1434] gasoline to any dealer operating a Chevron Station?

A. Yes.

Q. Does it endeavor to sell it gasoline? Is that correct?

A. We endeavor to take the whole station, in other words.

Q. Just answer my question, please. Do you endeavor to sell the dealer operating a Chevron gasoline station gasoline while he is operating that station? That is my question.

A. Well, in order to answer your question——

Q. Will you please answer that "Yes" or "No."

A. I can't say "Yes" or "No" to that. If you will just let me explain off the record.

The Court: No; no.

Mr. Dixon: Just a moment. I will give you another question.

The Court: Just a moment.

Mr. Dixon: Yes, your Honor.

The Court: You are not before any legislative committee and you cannot order anyone to answer "Yes" or "No" unless the court feels it is the sort of question that should be so answered.

The Witness: Your Honor——

The Court: Just a moment. Will you read the question, [fol. 1495] please?

(The question was read.)

The Court: That question can be answered "Yes" or "No" and then you may give an explanation, because he is asking you if you are trying, which is what "endeavor" means, to do that. That is an ordinary word and I don't need to explain it.

The Witness: That particular answer would be no, while he is operating that station.

The Court: All right. Do you want to explain your answer?

The Witness: No. What I was going to explain was——

The Court: You just said you weren't going to explain. Are you an attorney, too?

The Witness: I have studied law, yes.

The Court: Well, the Macmillan Company is rather full of lawyers. Are you with the Macmillan Company?

The Witness: No, with Tide Water Associated.

The Court: So many lawyers have been reformed, as Mr. Beeman says, and have become oil men, but the way some of them talk that were lawyers before, they have probably retained some of their legal training and technique.

By Mr. Dixon:

Q. Has your company, the Tide Water Associated Oil Company, ever sold any gasoline, to your knowledge, to any Chevron dealer while he was operating a Chevron [fol. 1496] Standard Oil Station?

A. Not to my knowledge.

Q. Now, directing your attention to Exhibit F, I believe

you testified that that form was instituted about seven years ago; is that correct?

A. That is the merchandise agreement?

Q. Yes.

A. I didn't mark down whether it was F, or what it was.

Q. Yes.

A. Yes, it was.

Q. Who prepared that form, do you know?

A. Our sales legal staff.

Q. Did you have anything to do with its preparation?

A. In a sense, yes.

Q. In preparing it, did you refer to any forms of the Standard Oil Company TBA agreement, in preparing this form?

A. I didn't.

Q. Do you know whether anyone who was connected with the preparation of form F, or had anything to do with its preparation, referred to the Standard Oil form, Government's Exhibit 2?

Mr. Hall: If you will pardon me, Mr. Dixon, the form you refer to as Standard's form was not in existence at [fol. 1497] the time you are putting the question.

Mr. Dixon: That is what I want to find out from this witness.

Mr. Hall: I will stipulate to that.

Mr. Dixon: I would like to ask this witness the question.

The Witness: My answer would be that I don't know what forms our law department looked at when they prepared our forms.

By Mr. Dixon:

Q. In other words, I take it you had nothing to do with the preparation of the merchandise agreement, Exhibit F?

A. I answered "Yes" before, so I won't change my answer, but I will say we have a form committee, and our attorneys draw it up and I check it from the vice-president's standpoint, and our accountant checks it from their standpoint. That is the only way I could do it.

Q. Before this form was prepared, did you see the forms of any other oil companies?

A. I did not.

Q. You did not yourself. Do you know whether there

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were any other forms in existence or used by any other oil companies at that time?

A. There may have been. I don't know.

Q. You say there may have been?

[fol. 1498] A. Yes.

Q. But you didn't see any yourself?

A. No.

Q. And these were drawn up by your legal department? That is, Exhibit F?

A. Yes.

Mr. Dixon: That is all.

Redirect examination.

By Mr. Hall:

Q. Just one question, Mr. McCall. I notice on Defendants' Exhibit B, Item 4 refers to number of split retail dealers handling company's branded gasoline, and that is followed by a series of numbers. Is that intended to refer to what is commonly called in the oil parlance split pump accounts?

A. Yes.

Mr. Hall: That is all. Thank you.

The Court: Any further questions?

(No response.)

The Court: Very well. Step down.

The Witness: Am I excused so that I can leave?

The Court: Yes, unless you want him retained under subpoena?

Mr. Hall: Yes, I would like to have the witness excused.

The Court: All right, sir. You may be excused.

[fol. 1499] Elbert A. Hugill, Jr., called as a witness by defendants, being first sworn, was examined and testified as follows:

The Clerk: What is your name?

The Witness: Elbert, E-l-b-e-r-t A. Hugill, H-u-g-i-l-l, Junior.

Mr. Dixon: I did not get that. I am sorry. What was the name, please?

The Clerk: Elbert A. Hugill, Jr.

Direct examination.

By Mr. Hall:

Q. What is your occupation, Mr. Hugill?

A. I am in the legal department of Shell Oil Company.

Q. I show you Defendants' Exhibit B, Mr. Hugill, and ask you if a copy of that exhibit was presented to your company with a request for the information outlined in that exhibit?

A. Yes.

Mr. Hall: I ask that sheets containing a compilation be marked as Defendants' Exhibit for identification next in order.

The Clerk: Defendants' G marked for identification.

Mr. Hall: I ask that there be marked with Defendants' letter next in order for identification, as one exhibit, forms of contracts and agreements.

[fol. 1506] The Clerk: Defendants' H for identification.

Mr. Hall: I ask that there be marked with Defendants' letter next in order, as one exhibit for identification, forms of service station lease and service station sublease.

The Clerk: Defendants' Exhibit I marked for identification.

By Mr. Hall:

Q. I show you, Mr. Hugill, the sheets which have now been marked Defendants' Exhibit G for identification, containing certain answers and certain schedule, and ask you if those sheets were prepared under your supervision from the records of Shell Oil Company?

A. Yes, they were.

The Court: All right.

By Mr. Hall:

Q. Does Shell Oil Company lease service stations to independent dealers?

A. Yes.

Q. Are the products of Shell Oil Company sold through independent dealers in the seven western states which are referred to in Exhibit G?

A. The Shell brand of petroleum products?

Q. Yes.

A. Yes; they are.

Q. That would include gasoline and lubricating oil, would it?

A. That is correct.

[fol. 1501] Q. Are tires, tubes, and batteries sold at stations which handle the Shell products in the seven western states?

A. Yes; at some of the stations.

Q. Are the products which I have referred to, namely, the petroleum products and the tires, tubes, and batteries which are sold at Shell stations handling Shell products in competition with the products sold at stations handling the products of Standard Oil Company of California?

A. Yes.

Mr. Dixon: May the record show my continuing objection, your Honor?

The Court: Yes.

Mr. Dixon: Government's No. 1 to this line of testimony.

By Mr. Hall:

Q. I show you the documents which have been marked Exhibit I for identification and ask you if those are the forms of lease or are forms of lease which are currently and commonly used by Shell Oil Company in leasing service station properties to independent dealers?

A. Yes; they are.

Q. And do you know how long these documents have been put to that use by Shell Oil Company?

A. For varying length of time.

Q. Well, let me put the question this way: For how long a period have documents like those referred to in Defendants' Exhibit I for identification or substantially like them [fol. 1502] been in use by Shell Oil Company for that purpose?

A. The first lease, that is the one marked "SS-61", I believe has been in use for over 10 years. The other two

documents designated "DO-727" and "DO-727-A" or forms substantially like them have been in effect for approximately five years, I believe.

Q. I notice I have been talking about "Shell Oil Company" and these documents seem to show the corporate name is "Shell Oil Company, Incorporated." You have understood in my questioning that I was referring to the corporation referred to in these documents?

A. Yes. That is Shell Oil Company, Incorporated. Shell Oil Company, prior to April 1st of 1939.

Q. Now, I show you the documents which have been marked for identification as Defendants' Exhibit H and ask you if those are forms of documents commonly and currently employed by Shell Oil Company, Inc., in contracting with the independent dealers that operate the stations that handle its products?

A. These are forms in use on some but not all of the dealers' stations.

Q. Would you indicate by a number, possibly, or by the identification of the document which of those forms are not employed in dealings between Shell Oil Company, Inc., and independent dealers?

[fol. 1503] A. I should say this: That all of these forms are used by Shell in its arrangements with dealers, but not in its arrangements with all dealers.

Q. Oh, yes. I misunderstood.

A. Does that clarify my position?

[fol. 1504] Q. That clarifies it; yes. Can you indicate the approximate length of time that documents like or substantially like those shown in Exhibit H for identification have been put to such use?

A. Forms DO-580-B, DO-581-C, and SS-71 or forms like them have been in use, I believe, for ten years or more. I believe the same thing can be said of Form DO-652. I believe I can classify all of them together under that answer.

Q. And it is true, is it not, that a service station which is leased by Shell Oil Company, Inc., to a dealer may be a station upon which Shell Oil Company itself holds a lease as lessee?

A. That is correct.

Q. And that station may have been leased to Shell either by the very dealer to whom it is sublet or by some third party?

A. Yes.

Mr. Hall: Take the witness.

Mr. Dixon: May the record show, your Honor, that there has been a continuing objection——

The Court: That is correct.

Mr. Dixon: ——Government's No. 1 to all of these questions?

The Court: That is correct. And it is no longer the rule that, to make your objection good, you have to decline to [fol. 1505] cross-examine. That never was the law in California, anyway. One thing about us you will find out, Mr. Dixon, that we have had in our procedure for many, many years some of the best things to be found in Civil Procedure anywhere. We observe that here. We began way back in 1850 to modernize our Civil Procedure and we have kept after it ever since.

Mr. Hall: Will you pardon me a moment, Mr. Dixon?

Mr. Dixon: Yes.

Mr. Hall: Defendants desire to offer into evidence the documents heretofore marked as Defendants' Exhibits G, H, and I for identification.

Mr. Dixon: The Government's objection No. 1.

The Court: Are those similar?

The Clerk: You have looked at some of those, your Honor.

The Court: Oh, that is the group I have looked at. I can see the imagination of the lawyers of this company was at work, because they have got all sorts of things. They even have contracts that they call 100 per cent contracts. They have to pass in an Americanism test.

All right; objection is overruled and the groups of documents may be received.

The Clerk: G, H, and I in evidence.

[fol. 1506] Cross-examination.

By Mr. Dixon:

Q. I notice that this 100 per cent dealer gasoline contract referred to by his Honor bears the notation at the top "1-39". Does that mean that that form was adopted in 1939?

A. It means the piece of paper from which that was photoprinted. Mr. Dixon, was printed in January, 1939.

Q. So that the form was at least in operation and use by the company on that date, is that correct?

A. Or presumably within a short——

The Court: Which one?

The Witness: Pardon me.

Mr. Dixon: Did you see them, your Honor?

The Court: Is that the one—there are two 100 per cent contracts; a 100 per cent dealer gasoline contract, and the other called 100 per cent dealer gasoline and paint work and sign agreement. All right.

By Mr. Dixon:

Q. Was the latter one that his Honor just referred to as another 100 per cent dealer gasoline and paint work and sign agreement put into effect at the same time as the other 100 per cent dealer gasoline contract?

A. No, sir.

Q. When was the latter one put into effect, if you know?

[fol. 1507] Mr. Hall: Just a minute. What do you mean by "the latter one"?

Mr. Dixon: The latter one, Mr. Hall, the paint work and sign agreement, 100 per cent dealer gasoline contract.

A. No, sir.

By Mr. Dixon:

Q. When was that put into effect, Mr. Hugill?

A. Would you please refer to the date in the upper left-hand corner?

Q. I did, but I didn't find any. That is what I was looking for. That is why I asked you the question.

The Court: It is not on the second one. I could not find any, either.

A. My recollection is that it was a year or two ago.

By Mr. Dixon:

Q. Did you prepare any of these agreements yourself?

A. I assisted in the preparation of some of these; yes.

Q. In doing so did you consult the forms of any of the

other oil companies selling petroleum products in the seven western states referred to?

A. Yes; I had occasion to look at those.

Q. Did you consult or refer to any of the Standard Oil forms of agreements comparable to any of those referred to in Exhibit H in preparing any of those agreements?

A. I don't remember whether I looked at the Standard [fol. 1508] form or not.

Q. Well, it is a fact, is it not, that the Standard Oil sells more gasoline or is the No. 1 seller of gasoline in the seven western states, Mr. Hugill?

A. I so understand; yes.

Q. Did you, therefore, or do you want the record to show that you did not look at any of the Standard Oil forms of this character in preparing your form or any of these forms?

A. No.

Q. I am not sure I understand your answer.

A. I said, "No:" that I don't.

Q. You mean you did not look at any of them?

A. No. I say, I don't want the record to show that I did not look at that.

Q. That is what I want to know.

A. I don't remember whether or not I looked at the Standard form.

The Court: In other words, you can't say positively that you did, but you may have?

The Witness: That is correct.

The Court: And chances are, as lawyers generally do when they draw a contract, that you are going to consult any precedents which are available dealing with the particular subject; isn't that true in this case?

[fol. 1509] The Witness: Yes; that is correct.

The Court: In other words, you look into the field and see what others have drawn, and then draw your own on the basis of past experience.

The Witness: Occasionally these forms are brought to our attention, rather than our going out and seeking them.

The Court: That is right.

By Mr. Dixon:

Q. Do you know anything about the sale of Shell products to retail outlets, Mr. Hugill?

A. What do you mean?

Q. Well, I believe you testified that you helped to prepare or that these documents, Exhibit G, were prepared under your supervision and control; I mean under your supervision, is that correct?

A. I assembled——

Mr. Hall: Pardon me. I would like to have that question read, please.

The Court: Will you read the question, please?

(Question read by the reporter.)

A. The information was assembled under my supervision.

By Mr. Dixon:

Q. Were the records from which this compilation was made, were they under your control?

A. No, sir.

Q. Or supervision?

A. No, sir.

[fol. 1510] Q. Do you know whether Shell Oil Company endeavors to sell its gasoline to any Chevron dealer while he is operating a Chevron station?

A. I don't know.

Q. Do you know whether the Shell Oil Company has ever sold any gasoline to any Chevron dealer outlet while he was operating such an outlet?

A. No; I don't know.

Mr. Dixon: If the court please, we might object to the admission of Exhibit G on the further ground that these records were not prepared by the persons under whose supervision and control the records were kept. However, I assume that the records would probably come in in any event.

The Court: I don't know what your record is. He is testifying to forms in use.

Mr. Dixon: No. I am referring, your Honor, to Exhibit G.

The Court: Oh, the data?

Mr. Dixon: Yes.

The Court: The one that has the tabulations?

Mr. Dixon: Yes.

The Court: Oh, the tabulations.

(Counsel conferring privately.)

Mr. Dixon: The records would probably be the same, your Honor. I will withdraw my objection, but my continu-
[fol. 1511] ing objection Government's No. 1 still stands.

The Court: All right.

Mr. Hall: Had you finished with Mr. Hugill?

Mr. Dixon: Yes.

Mr. Hall: That is all, Mr. Hugill. May Mr. Hugill be excused, your Honor?

The Court: Yes.

Mr. Hall: Mr. Christy.

Ronald A. Christy, called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Ronald A. Christy, C-h-r-i-s-t-y.

The Clerk: The middle initial is what?

The Witness: A.

The Clerk: Your last name is?

The Witness: C-h-r-i-s-t-y.

Direct examination.

By Mr. Hall:

Q. What is your occupation, Mr. Christy?

A. I am the manager of the marketing and statistical department of General Petroleum Corporation.

Q. How long have you held that position?

A. For over six years, that particular position.

Q. And how long have you been connected with General
[fol. 1512] Petroleum Corporation?

A. 28 years.

Q. Has it been in the marketing department for the last 10 years?

A. Yes, sir; it has.

Mr. Hall: I ask that sheets which I now present, entitled "General Petroleum Corporation Compilations", six sheets, be marked as one exhibit with Defendants' number for identification, next in order.

The Clerk: Defendants' Exhibit J for identification.

By Mr. Hall:

Q. Do you recall, Mr. Christy, that some weeks or some months ago I presented to General Petroleum Corporation a series of questions which are now reflected in Defendants' B for identification?

A. Yes, sir.

Q. I show you the documents which have been marked Defendants' Exhibit J for identification and ask you if those are compilations prepared under your supervision from the books and records of General Petroleum Corporation?

A. These are the sheets prepared under my supervision.

Q. And they were prepared in response, so far as they do respond, to the questions which are set out in the Defendants' Exhibit B for identification?

A. Yes, sir.

Q. Is the gasoline of General Petroleum Corporation and [fol. 1513] its lubricating oil sold through service stations operated by independent dealers?

A. Yes, sir.

Q. Do those stations also sell tires, tubes, batteries, and automotive accessories?

A. Yes, sir.

Q. Are those products thus sold through stations handling General Petroleum Corporation's products in competition with products of like description sold at gasoline service stations selling the products of Standard Oil Company of California?

A. Yes, sir.

Q. And that is true, is it, with respect to the seven western states; and I mean by that, the States of California, Oregon, Washington, Arizona, Nevada, Utah, and Idaho?

A. Yes, sir; that is true. We are now operating in the seven states.

Mr. Hall: I ask that there be marked with Defendants' letter next in order for identification, as one exhibit, two forms of a service station lease, designated in the one case "L" and in the other case "LX".

The Clerk: Defendants' Exhibit K marked for identification.

Mr. Hall: I ask that there be marked for identification with Defendants' letter next in order, as one exhibit and for

[fol. 1514] identification, forms of dealer contract L, Dealer contract LX, and dealer's gasoline contract.

The Clerk: Defendants' L marked for identification.

By Mr. Hall:

Q. Does the General Petroleum Corporation lease service stations to independent dealers handling its products?

A. Yes, sir.

Q. And is that a practice in all of the seven states that we have referred to?

A. I believe so.

Q. I show you documents which have been marked Defendants' Exhibit K for identification and ask you if those are forms of leases made by General Petroleum Corporation as lessor to dealers as lessee currently and commonly in use?

A. Yes, sir; I believe these are in current use.

Q. Now, does General Petroleum Corporation make gasoline contracts with independent dealers who handle its products?

A. Yes, sir.

Q. Is that generally the practice in the seven western states that I have referred to?

A. I believe so.

[fol. 1515] Q. I show you the documents which have been marked Defendants' Exhibit L, for identification, and ask you if those forms of gasoline contracts are currently and commonly in use by General Petroleum Corporation in its dealings with independent dealers handling its products?

A. Yes.

Q. Could you tell me, Mr. Christy,—perhaps you can't, but if you could, I would appreciate it—how long the forms of contract or forms substantially like the forms of contract shown in Exhibit L, for identification, have been in use by the General Petroleum Corporation and its dealers?

A. Well, I know they have been for several years.

Q. Would you say seven or eight years, at least?

A. Probably six or seven, or eight years, I would say. I don't know exactly. I didn't execute the forms.

Q. Could you tell me how long forms like or substantially like the forms in Exhibit K, for identification, have been in use between General Petroleum Corporation and its dealers?

Mr. Dixon: Pardon me, Mr. Hall. Was the last question prior to that with reference to Exhibit L?

Mr. Hall: Yes.

Mr. Dixon: I see.

Mr. Hall: Now I am talking about Exhibit K.

[fol. 1516] Mr. Dixon: Thank you.

The Witness: I don't think this one has been in use very long. I don't know. I am not sure.

Mr. Hall: In the witness' last answer he has indicated that form 4745 has not been in use very long. That is a part of Defendants' Exhibit L, for identification.

By Mr. Hall:

Q. Mr. Christy, I call your attention to the date at the top of the sheet we have just been talking about, and ask you if that refreshes your recollection as to the length of time that document has been in use.

A. This would indicate that this form was revised on 12-16-46, and undoubtedly prior to that there was another form.

Mr. Hall: Defendants offer in evidence Exhibits J, K and L, heretofore marked for identification.

Mr. Dixon: Continuing objection, Government's Objection No. 1, to these documents and to all the testimony of this witness prior to the offer of admission of these documents into evidence.

The Court: The objection will be overruled. The documents may be received and marked as Defendants'—

The Clerk: J, K and L in evidence.

The Court: —Exhibits J, K and L; as to J the understanding being that the books will be available for inspection.

[fol. 1517] Mr. Dixon: May I see those, your Honor?

The Court: Yes.

Mr. Hall: You may examine.

Cross-examination.

By Mr. Dixon:

Q. I notice both Exhibits K and L have the notation at the top "Revised" in the year 1947.

A. There are different dates of revision indicated, yes.

Q. How long prior to the date of revision of these contracts, were contracts substantially the same in form as Exhibits L and K in effect?

A. I do not know, but I surmise——

Q. Do you know who prepared the revisions?

Mr. Hall: Just a minute. Let him finish.

Mr. Dixon: I thought he said he didn't know.

Mr. Hall: He started to add an explanation.

Mr. Dixon: If he said he didn't know I am not interested in anything further.

The Court: Have you concluded your answer?

The Witness: No, I have not.

The Court: You may complete it.

The Witness: I said I didn't know exactly.

The Court: Whether counsel is interested or not, the [fol. 1518] question is whether the court is interested, and the court is always interested in any explanation a witness has to make of an answer.

The Witness: Being, as I am, the manager of the marketing statistical department, I don't know exactly, because I have no part in the preparation of the forms. But I have been exposed to these forms, and I know of their existence for a period of years.

By Mr. Dixon:

Q. Can you tell the court how long forms substantially the same as Exhibits K and L were in effect by your company before they were revised in the form of Exhibits K and L?

A. Forms similar to these probably six or eight years.

Q. Do you know who prepared them?

A. Yes, I imagine the legal departments in the marketing.

Q. At least, you had nothing to do with the preparation, Mr. Christy?

A. I did not.

Q. Do you know whether or not your company solicits the trade of any Chevron dealer selling Standard Oil products, while he is selling such products as a Chevron dealer?

A. I do not know.

Q. You don't know?

[fol. 1519] A. I don't know.

Q. Do you know whether your company has ever sold

any gasoline to any Chevron dealer outlet while it was operated by a Chevron dealer?

A. I do not know.

Mr. Dixon: That is all.

Mr. Hall: That is all Mr. Christy.

I will call Mr. Wharton.

CLINTON S. WHARTON, called as a witness by the defendants, being first duly sworn, testified as follows:

The Clerk: Take the stand, please, sir. What is your name, please?

The Witness: C. S. Wharton, W-h-a-r-t-o-n.

The Clerk: And will you state your full first name?

The Witness: Clinton, C-l-i-n-t-o-n.

Direct examination.

By Mr. Hall:

Q. What is your occupation, Mr. Wharton?

A. Assistant to territorial manager, marketing.

Q. For The Texas Company?

A. Right.

Q. How long have you been connected with The Texas [fol. 1520] Company?

A. Eighteen years.

Q. How long have you held your present position?

A. Since 1943.

Q. Do you recall that several weeks or possibly months ago I made a request on your company, which is set forth in the sheet which has now been marked Exhibit B?

A. I do.

Mr. Hall: I ask that a compilation consisting of two pages be marked as one exhibit, for identification, with Defendants' letter next in order.

The Clerk: Defendants' Exhibit M, marked for identification.

Mr. Hall: I ask that two sheets entitled "The Texas Company" being forms "S-207D, Idaho and Utah" and "S-207D, L. A. and Seattle" be marked, for identification as one exhibit with Defendants' letter next in order.

The Clerk: Defendant's Exhibit N, marked for identification.

Mr. Hall: I ask that three sheets that I now present be marked with the Defendants' letter next in order, as one exhibit, for identification.

The Clerk: Defendants' Exhibit O, marked for identification.

By Mr. Hall:

Q. I show you these sheets, Mr. Wharton, which have [fol. 1521] been marked Defendants' Exhibit M, for identification, and ask you if those were prepared under your supervision from the records of your company, responsive to the inquiries which are set out in Exhibit B.

A. That is right.

Q. Is The Texas Company's gasoline and lubricating oil sold through independent dealer stations?

A. It is.

Q. In the states of California, Oregon, Washington, Arizona, Nevada, Utah and Idaho?

A. It is.

Q. Has that been true for the last 10 years?

A. That is correct.

Q. Do those stations that I have referred to handle tires, tubes, batteries or accessories?

A. Most of them.

Q. Are the products sold at those stations, including petroleum products and including tires, tubes, batteries and accessories in the states I have mentioned, sold in competition with the products sold at stations that handle the products of Standard Oil Company of California?

A. They are, if those stations are in the contiguous area.

Q. Does The Texas Company lease service stations to independent dealers?

[fol. 1522] A. We do.

Q. Is it true that some of the stations so leased will be stations which have been previously leased by the dealer to The Texas Company?

A. That is correct.

Q. And other stations will be stations leased by some third party to The Texas Company, as lessee?

A. That is correct.

Q. I show you the documents which have been marked

Defendants' Exhibit O, for identification, and ask you if the first sheet of that exhibit is a form of lease employed by The Texas Company in leasing service stations to dealers?

A. That is right.

Q. Can you tell me what use is made of the second and third sheets which are a part of this exhibit?

A. Well, would you care to clarify your question as to the use made of it? The form itself is explanatory of its use, it seems to me.

Mr. Hall: Will you read the answer, please?

(The answer was read.)

Mr. Hall: If the form is explanatory, then I don't need any answer to the question.

By Mr. Hall:

Q. I show you the documents which have been marked Defendants' Exhibit N, for identification, and ask you if those are forms of contract employed by The Texas Com-
fol. 1523] pany in its relations with dealers, independent dealers, operating stations where its products are sold?

A. That is right.

Q. I notice that one of the sheets embodied in Exhibit N refers to L. A. and Seattle and another refers to Idaho and Utah. Do those notations on the sheets indicate the localities in which those particular forms are used?

A. Those are separate divisions of the territory, right.

Q. Then in what states would the sheet which is headed "Idaho and Utah" be used?

A. In those states.

Q. And would the sheet headed "L. A. and Seattle" be used in the remaining five of the seven western states?

A. Seattle, Washington, Oregon, Los Angeles, California, Nevada and Arizona.

Q. Can you tell me, Mr. Wharton, how long approximately forms of contract like or substantially like those included in Exhibit N, for identification, have been in common use by The Texas Company?

A. To the best of my recollection about seven years.

Q. Can you tell me approximately how long the form of

lease which is embodied in Exhibit O has been in common use by The Texas Company?

[fol. 1524] A. To the best of my knowledge, since about 1940.

Mr. Hall: Defendants offer in evidence the documents which have heretofore been marked for identification, as Exhibits M, N and O.

Mr. Dixon: Government's continuing objection No. 1 to the admission of the documents in evidence and to all of the testimony of this witness.

The Court: The objection will be overruled. The documents are received.

The Clerk: Defendants' M, N and O in evidence.

Mr. Hall: You may take the witness.

Cross-examination.

By Mr. Dixon:

Q. Mr. Wharton, do you know whether your company solicits business, that is, endeavors to sell Texas gasoline to any Chevron dealer selling Standard Oil products?

A. I do not know whether that has been done or not.

Q. Do you know whether The Texas Company has ever sold any Texas gasoline to a Chevron dealer while he was operating a Chevron outlet?

A. I do not know.

Mr. Dixon: Thank you. That is all.

Mr. Hall: May Mr. Wharton be excused?

The Court: Yes. I think we will take a short recess, [fol. 1525] gentlemen, at the present time.

(A short recess was taken.)

The Court: Proceed.

Mr. Hall: I will call Mr. Harold D. Seeley.

Harold D. Seeley, called as a witness by the defendants, having been first duly sworn, testified as follows:

The Clerk: Take the stand, please, sir. What is your name, please?

The Witness: Harold D. Segley, S-e-e-l-e-y.

Direct examination.

By Mr. Hall:

Q. What is your occupation, Mr. Seeley?

A. Administrative supervisor in the marketing department of the Union Oil Company.

Q. That is the Union Oil Company of California?

A. That's right.

Q. How long have you held that position?

A. Substantially the same position about seven years.

Q. How long have you been employed by the Union Oil Company of California?

A. Twenty-six years.

Mr. Hall: I ask that there be marked, for identification [fol. 1526] as one exhibit with Defendants' letter next in order these sheets of compilation, four in number.

The Clerk: Defendants' Exhibit P, marked for identification.

[fol. 1527] Mr. Hall: I ask that there be marked with Defendants' letter next in order as one exhibit for identification only, service station lease of Union Oil Company of California, form 909.

The Clerk: Defendants' Q marked for identification.

Mr. Hall: I ask that there be marked with Defendants' letter next in order for identification, as one exhibit, a form of retail dealer gasoline contract of Union Oil Company of California, form 896-F.

The Clerk: Defendants' Exhibit R marked for identification.

Q. I show you, Mr. Seeley, a document which has been marked Exhibit B and ask you if the inquiries contained in that document were submitted to Union Oil Company of California within the last few weeks or months?

A. They were.

Q. I show you the sheets which have now been marked Defendants' Exhibit P for identification and ask you if those compilations included in that exhibit for identification were prepared by you from the books or records of the company responsive to certain of the inquiries which are set out in Exhibit B?

A. They were.

Q. Do gasoline service stations which sell the petroleum

products of Union Oil Company of California also sell tires, [fol. 1528] tubes, batteries, and accessories?

A. They do.

Q. Is that true with respect to the states of Washington, Oregon, California, Arizona, and Nevada?

A. That is right.

Q. Do stations selling Union Oil petroleum products in the states of Utah and Idaho sell also tires, tubes, batteries, and accessories?

A. I believe they do.

Q. Are the petroleum products—and by that I mean particularly gasoline and lubricating oils, and the tires, tubes and batteries which are sold at gasoline service stations in the states which we have referred to which handle Union Oil petroleum products sold in competition with products of similar character sold at the gasoline service stations operated by dealers that sell products of Standard Oil Company of California?

A. I would say they are.

Q. Does Union Oil Company of California in the states we have referred to make leases of service stations to independent dealers?

A. They do.

Q. I will show you the document which has now been marked Defendants' Exhibit Q for identification and ask you if that is a form of lease which is currently and com- [fol. 1529] monly employed in the states that we have referred to by Union Oil Company of California in leasing gasoline service stations to dealers handling those products?

A. It is.

Q. Can you indicate how long, approximately, a form of lease of that character or substantially like that form of lease has been in use for that purpose by Union Oil Company of California?

A. Over 10 years.

Q. Does Union Oil Company of California make contracts with the dealers operating the gasoline service stations where its gasoline is sold?

A. It does.

Q. I show you a document which has been marked Defendants' Exhibit R for identification and ask you if that is the form of contract commonly employed and currently

employed by Union Oil Company of California for that purpose in the states to which we have referred?

A. It is.

Q. Can you indicate approximately how long a form of contract like that or substantially like that form shown in Defendants' Exhibit R for identification has been employed for that purpose?

A. A contract substantially like this form, less than five years.

[fol. 1530] Mr. Hall: Defendants now offer into evidence the documents which have heretofore been marked for identification as Exhibit P, Q, and R.

Mr. Dixon: The Government's objection No. 1 to the admission into evidence of those documents and all of the testimony of this witness.

The Court: The objection will be overruled and the documents will be marked P, Q, and R and received into evidence, with the understanding that the figures are subject to correction if found to be in error.

The Clerk: Exhibits P, Q, and R admitted in evidence.

Mr. Hall: I don't know whether I asked you this question. At the risk of repetition, I will ask you again, if I already have, Mr. Seeley.

Q. Are the products sold in the seven western states at the gasoline service stations handling Union Oil Company of California products sold in competition with products of similar character sold at stations operated by dealers handling products of Standard Oil Company of California?

A. I think you asked that, but the answer is they are.

Mr. Hall: You may take the witness.

Cross-examination.

By Mr. Dixon:

Q. By "competition" you mean, Mr. Seeley, that the Union Oil Company gasolines and so on are sold at dealer outlets; is that what you mean?

[fol. 1531] A. That is right.

Q. Now, does your company ever endeavor to sell any gasoline, for example, to any of the Chevron operated stations selling Standard Oil gasoline while they were selling such gasoline?

A. I don't know.

Q. You say you don't know?

A. I don't know.

Q. Do you know whether they have ever made any sales of Union Oil gasoline product to such stations while they were being operated by the Chevron dealers?

A. That I don't know.

Q. Do you know when those forms, Exhibits Q and R, were prepared, Mr. Seeley?

A. Oh, you asked me when they were prepared?

Q. Yes.

A. This form has been in effect——

Q. And is Exhibit Q?

A. Exhibit Q has been in effect over 10 years to my knowledge.

Q. Do you know whether forms substantially similar to that were in use by any other oil company at the time the Union Oil Company first used it at that time?

A. That I don't know.

Q. Are you familiar with any of the forms that were in [fol. 1532] use in the oil industry generally at the time form Exhibit Q was first used by your company?

A. No.

Q. Are you familiar with the time when Exhibit R was first put into use by your company?

A. Well, it was within the last five years, less than five years.

Q. Do you know what other companies, if any, were using a form substantially similar to that in the territory in which your company sells your product at that time?

A. I do not.

Q. In other words, you did not prepare either of the forms?

A. No; I did not.

Q. Exhibit R or Q, or have anything to do with their preparation?

A. No. That is right.

Mr. Dixon: That is all.

Mr. Hall: That is all, Mr. Seeley. May Mr. Seeley be excused?

The Court: You may be excused.

Mr. Hall: Call Mr. Rogers.

[fol. 1533] The Clerk: What is your name, please?

A. Elmer E. Rogers, as in Charles Rogers, Rogers.

Direct examination.

By Mr. Hall:

Q. What is your occupation, Mr. Rogers?

A. I am supervisor of marketing accounts for the Union Oil Company of California.

Q. How long have you held that position?

A. Eight years.

Q. How long have you been employed by Union Oil Company of California?

A. 25 years.

Mr. Hall: I ask that four sheets of computations, or figures and notes be marked with the letter next in order as one exhibit for identification only.

The Clerk: Defendants' Exhibit S for identification.

By Mr. Hall:

Q. Do you recall, Mr. Rogers, that some weeks or months ago I submitted your company an inquiry which is exhibited by the matter that is now shown in Defendants' Exhibit B?

A. That is correct.

Q. And responsive to certain of those inquiries were certain schedules prepared?

A. That is correct.

[fol. 1534] Q. I show you the document which has now been marked Exhibit S for identification and ask you if those are the schedules which were thus prepared?

A. That is right.

Q. And the figures shown in those schedules were taken from the books and records of Union Oil Company of California?

A. That is right.

Mr. Hall: Defendants offer into evidence the document which has been marked Exhibit S for identification.

Mr. Dixon: Objection to the admission into evidence of such documents and the succeeding testimony of the witness on Government's objection No. 1.

merely a different witness. The objection is overruled. It may be received.

The Clerk: S in evidence.

Mr. Hall: You may take the witness.

Cross-examination.

By Mr. Dixon:

Q. Do you know, Mr. Rogers, whether your company ever solicited the business of a Chevron dealer selling Standard products while he was operating such station? [fol. 1535] A. I have no knowledge of that.

Q. Do you know whether your company ever sold a Chevron dealer selling such Standard products any of your products while operation as a Chevron dealer?

A. I don't know that.

Mr. Dixon: That is all.

Mr. Hall: That is all. May Mr. Rogers be excused? I will call Mr. David Will.

David Will, a witness called by the defendants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: David Will, W-i-l-l.

Direct examination.

By Mr. Hall:

Q. What is your occupation, Mr. Will?

A. I am contract lease manager for Richfield Oil Corporation.

Q. How long have you held that position?

A. Since 1942.

Q. How long have you been employed by Richfield Oil Corporation?

A. Approximately 19 years.

Mr. Hall: I ask that three sheets of schedules be marked with defendants' letter next in order as one exhibit for [fol. 1536] identification only.

The Clerk: Defendants' T marked for identification.

Mr. Hall: And I ask that there be marked with defendants' letter next in order for identification only a set of forms of contracts and leases.

The Clerk: Defendants' U, marked for identification.

By Mr. Hall:

Q. Do you recall, Mr. Will, that several weeks or months ago I submitted to your company an inquiry which is now shown in Exhibit B?

A. Yes.

Q. I now hand you the sheets which have been marked Defendants' Exhibit T for identification and ask you if those are schedules prepared in response to certain of the inquiries shown in Exhibit B?

A. They are.

Q. Were those schedules which are Exhibit T for identification prepared from the records of your company and under your supervision?

A. They were prepared from the records of our company by our accounting staff.

Q. Is it a fact Richfield gasoline and Richfield lubricating oils are sold through independent dealer stations in the states of California, Arizona, Nevada, Oregon, Washington, and Idaho?

A. That is correct.

[fol. 1537] Q. How about Utah, are they sold in Utah?

A. Not to my knowledge.

Q. Do dealers handling those petroleum products also handle tires, tubes, batteries, and accessories?

A. The majority of them do; yes.

Q. And that applies to the six western states?

A. Yes.

Q. Mentioned in this Exhibit T for identification?

A. Yes.

Q. Does Richfield Oil Corporation lease gasoline service stations to independent dealers?

A. Yes.

Q. And that practice prevails in the six western states to which we have referred?

A. Yes.

Q. Is it true that certain of the properties so leased would be properties which had been leased to Richfield Oil

Corporation either by the dealer to whom the station was leased or by some third party?

A. That is correct.

Q. And that would apply in these six western states to which we have referred, would it?

A. Yes.

Q. Does Richfield Oil Corporation make contracts with dealers selling its petroleum products as these independent

[fol. 1538] dealer stations?

A. Are you speaking now of stations that we have under lease with third parties?

Q. Well, I will make it broader than that. Do they make contracts with stations that are not under lease?

A. Yes.

Q. And then, do they make contracts with stations that are under lease; is that correct?

A. Yes.

Q. I show you a collection of contracts and leases that have now been marked for identification as Defendants' Exhibit U and ask you if those are forms currently and commonly in use by Richfield Oil Corporation in these six western states in its dealings with independent operators of gasoline service stations?

A. Yes.

Q. Are the petroleum products and the tires, tubes, and batteries that are sold at these dealer stations where Richfield petroleum products are handled commonly sold in competition with products of like character handled at dealer stations where the products of Standard Oil Company of California are handled?

A. I would say so; yes.

Mr. Hall: Defendants offer into evidence Exhibits heretofore marked for identification as U and T.

[fol. 1539] Mr. Dixon: The Government's objection No. 1 to the admission into evidence of such documents and the testimony of this witness.

The Court: All right; the objection will be overruled.

Mr. Clerk: Defendants' T and U in evidence.

Mr. Hall: You may take the witness.

Cross-examination.

By Mr. Dixon:

Q. Mr. Will, by referring to Exhibit T will you state, if you can, to the court whether any of the products referred to in said exhibit were sold to any Chevron dealer handling Standard Oil products?

A. I don't know.

Q. While he was operating such station? You say what?

A. I don't know.

Q. You don't know. Were you in charge of the preparation of these records or of the compilation from which the material contained in Exhibit B was secured?

A. No. I believe I stated in answer to the question before that it was prepared by our accounting staff from our corporate records.

Mr. Dixon: That is all.

Mr. Hall: That is all, Mr. Will. May Mr. Will be excused? [fol. 1548] The Court: He may be excused.

Mr. Hall: If your Honor would care to take an adjournment at this time, I find myself rather out of ammunition.

The Court: Well, I am willing to do that. The only reason that I am holding over is because I thought that some of these men from other companies who are occupying executive positions do not want to be discommoded too long. If you had one here I would go on, but if you do not, it is perfectly all right.

Mr. Hall: No; I have nobody in the court room from any other oil company so far as I know.

The Court: I see, all right. We have made good progress today, gentlemen, and while we took a long time to dispose of one legal matter, I think, gentlemen, that the time spent was worth it; and I think, by talking, I clarified my own thoughts, because, while I had given the matter some thought in anticipation, I assure you it was not a prepared speech. When it is written up you will probably notice that it was not.

Mr. Hall: We found it very enlightening and helpful, your Honor.

The Court: I repeated myself quite a good deal, but I always feel that a discussion like that saves time and also indicates to any reviewing court—because, as I said be-

fore, this is the type of case that is going to go to the [fols. 1541-1542] reviewing court because of the importance of the case and because it affects not only this corporation but others, as the evidence now clearly shows, who are in the same position and who have contracts of a similar character. Whether the Government has any actions against them or not I do not know.

So I felt that there should be a summation to try to clarify the court's own thought and indicate to counsel how I feel about the matter.

Of course, I am always amenable to additional reasons for changing my ruling. And even when evidence is in the record in a case of this character which is tried without the jury, counsel are not forbidden to argue at the conclusion of the case that certain evidence admitted should not be given any effect.

But a full statement avoids the repetition of argument and places in one place the view of the court and the divergent views of counsel in the case.

All right, tomorrow morning at 10:00 o'clock.

(Whereupon, an adjournment was taken until 10:00 o'clock a. m. of the following day, Friday, May 21, 1948.)

[fols. 1543-1544] In the District Court of the United States in and for the Southern District of California, Central Division

Honorable Leon R. Yankwich, Judge Presiding

No. 6159-Y Civil

United States of America, Plaintiff,

vs.

Standard Oil Company of California and Standard Stations, Inc., Defendants

Reporters' Transcript of Proceedings

Los Angeles, California, Friday, May 21, 1948.

Appearances:

(As heretofore noted.)

[fol. 1545] Los Angeles, California, Friday, May 21, 1948, 10:00 A.M.

Mr. Hall: Mr. Travis.

Ward E. Travis, called as a witness by the defendants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: My first name is Ward, W-a-r-d, initial E., Travis, T-r-a-v-i-s.

The Clerk: T-r-a-v-i-s, Ward E. Travis—right?

The Witness: That is right.

Direct examination.

By Mr. Hall:

Q. What is your present occupation, Mr. Travis?

A. I am assistant division manager of the sales equipment division in our office in San Francisco.

Q. Of the Standard Oil Company of California?

A. Yes, sir.

Q. When did you start to work with Standard Oil Company of California?

A. I started here in Los Angeles on service stations in 1920.

Q. And from then on will you briefly trace the course of your duties and experience with Standard Oil Company of California?

[fol. 1546] A. Well, from here, in 1922, I think in October or around there; I was transferred to Bakersfield, California as a superintendent of service stations in that particular district for Standard Oil and served in that position until 1924, I believe in either April or May, 1924, and at that time was transferred to—we considered that our retail department. At that time I was transferred back into the wholesale department in which I was a general salesman in San Francisco.

Q. Is that class of general salesman engaged in selling petroleum products to dealers?

A. To dealers; yes. Well, dealers, truckers, and people of that kind. It was a general wholesale operation but the majority of it was dealers, but had some truckers and people of that kind in addition to that.

Q. Will you carry on from there?

A. Yes. Then in March, I believe it was in 1925, I was transferred to Stockton, California, at which time I was made superintendent of what we called the—the title, as I recall, at the time was city sales superintendent, and that was a supervisory position but the same type of work that I was doing in San Francisco in calling on these dealers, and so forth. And at that time we had some, oh, 50 or 60 people in our organization doing the same type of work that I was doing in San Francisco. And I believe then, [fol. 1547] in March, 1927—I am sure that is correct—I was transferred to Portland, Oregon in the same capacity that I was in Stockton. It was a little larger field and had some 50 to 60 people up there under my direction, with the same title of city sales superintendent. Then I served in that capacity in Portland until July, 1929, at which time I was president of the Oregon Gasoline Stations, a retail marketing situation in which I held the controlling stock at that time. And then in 1931 I again joined the Standard Oil Company and I was made division manager for Standard Stations, Inc. from 1931 until June, 1934, at which time I was transferred again to greater fields, which was at Oakland, California, as the division manager for Standard

Stations, handling a similar position as at Portland as division manager there. Then in June, 1936 I was transferred to Los Angeles as the division manager for Standard Stations, Inc. in Los Angeles, where I served until October, 1945, when I was transferred back to San Francisco in the present position that I am in today.

[fol. 1548] Q. Now, in the course of the performance of your duties in these marketing department capacities, have you had occasion at times to make surveys of the territory under your jurisdiction relating to questions concerning the location of service stations and questions relating to gasoline consumption of your company and competitors?

A. Well, yes, Mr. Hall. That is necessary because, in particular, when you are in the—well, either the retail or wholesale end of our business, why, we, to justify spending any money for new locations, want to know as to how we are from a competitive standpoint, and that is one of the —probably the outstanding thing that is necessary, in your knowledge of being a manager of any of these divisions, that is, to know whether or not you can justify the expenditure of any extra money. So that is necessary at all times when you are installing a new station.

Q. Now, in the year 1946 did you receive any instructions from the company directing you to prepare in writing an opinion with reference to competitive conditions in any particular area?

A. Yes, sir. In the latter part of April, 1946 I was asked—in fact, I was in Salt Lake City, and was asked to proceed to Los Angeles and meet with a group of our officials, at which time discussion was had in that regard, and it seems that the decision was to ask me to head such [fol. 1549] a survey because I had been around Los Angeles from '36 to '46, and I was asked to make such a survey and give it to the officials, as to what our situation was in comparison to the competitive situation.

Mr. Hall: Now, Mr. Travis,—well, I think you have answered the question.

I ask that there be marked as Defendants' next in order, for identification only, a schedule entitled "Los Angeles Basin Competitive Service Station Report."

The Clerk: Defendants' Exhibit V, marked for identification.

By Mr. Hall:

Q. Now, this survey that you undertook at that time embraced a certain area in Southern California, did it?

A. Well, yes, it embraced what we, and I think everybody probably in the industry, considers the Los Angeles basin, which took in the greater part of Los Angeles County.

Mr. Hall: I ask that a map entitled, "Los Angeles Sales District," be marked as Defendants' Exhibit next in order, for identification.

The Clerk: Defendants' Exhibit W, for identification.

Mr. Hall: I ask that a map entitled, "Long Beach Sales District," be marked as Defendants' Exhibit next in order, for identification.

The Clerk: Defendants' Exhibit X, for identification.

[fol. 1550] By Mr. Hall:

Q. Standard has for a number of years, has it not, designated a certain area as the Los Angeles Sales District?

A. Yes, sir.

Q. And has also designated another area as Long Beach Sales District?

A. Yes, sir.

Q. I show you the maps that have been marked Defendants' Exhibit W and X, for identification, and ask you if they respectively depict the Los Angeles Sales District and the Long Beach Sales District?

A. Yes, sir, they do.

Q. Now, did this survey that you say you undertook embrace the entire Los Angeles Sales District, as shown in Exhibit W, for identification?

A. Yes, sir.

Q. Did the survey embrace a part of the Long Beach Sales District, shown in Exhibit X, for identification?

A. Yes, sir, that is correct.

Q. Now, will you take, and in pen and ink mark a line on Defendants' Exhibit X, for identification, south of which the area was covered by your survey?

A. I don't think I quite get that, Mr. Hall, south——

Q. Well, you say your survey covered a part of the Long Beach Sales District.

[fol. 1551] A. Oh, I see what you mean.

Q. Now, will you mark on Defendants' Exhibit X, for identification, a line which would indicate the division of the area and indicate the area south of the line which was covered by your survey.

Now, will you put at one end of that line the capital letter "A" and at the other end of the line the capital letter "B."

Now, do I understand that your survey covered the Long Beach Sales District south of the line A-B?

A. That's right; not the entire part of it, you see.

Q. Was some other part excluded also?

A. Yes, it was. It cuts right across from San Pedro. Do you want that further?

Q. Yes, put in another line, and mark it C-D.

A. That is a rather small map, but that approximately would show it, and would tell you what it covers.

Q. Now, to be sure that I understand this, your area in the Long Beach Sales District which was covered by the survey, is the area between the lines A and B and C and D?

A. That is correct.

Q. Now, I show you a document which has been marked Defendants' Exhibit V, for identification, and ask you if as a result of that survey you prepared that chart, which is so designated.

[fol. 1552] A. Yes, sir.

Q. Now, I will leave that exhibit before you. That chart that I have just referred to, Mr. Travis, if I understand you correctly, indicated your opinion, as stated to the company at that time, concerning the competitive dealer situation in the Southern California area to which you have referred?

A. That is correct, sir.

Q. Now, will you state——

Mr. Dixon: If the court please, I just rise to state at this time, so that the record may be clear, that the government's objection No. 1 is applicable to all of this line of testimony.

The Court: All right. Overruled.

By Mr. Hall:

Q. Now, will you tell us what procedures you went through and what steps you took in arriving at the result which is stated in Defendants' Exhibit V, for identification.

and which formed the basis for the opinion which you say you gave to the company, as reflected in that chart?

A. Well, for a little clarification, Mr. Hall, I might state that in this Los Angeles Basin survey, why, we had—there was ten branch managers of the different branches, which is indicated on this Exhibit V here, and the first thing was to go to those people and to their records and their estimates as to what their competitive situation was. Well, [fol. 1553] first they really showed us the number of competitive service stations that was in their particular branches.

Q. Yes.

A. Which was comparatively easy for them to do with accuracy, due to the fact that it was a matter of counting service stations and, of course, each service station has its own identification. They had no difficulty in establishing for this record the number of stations operated by our competitors.

Mr. Hall: Would your Honor like one of these for reference while I am examining?

The Court: Yes.

By Mr. Hall:

Q. Now, then, if I understand you correctly, the pattern of this exhibit is, first, to state a figure. Take the top row, for example. The figures there, 48, 8, 30, 15, and so on, are numbers of service stations?

A. That first row you are referring to is self-explanatory, Chevron stations indicated in the separate branches, and with the total at the end of each district.

[fol. 1554] Q. And the horizontal row of service stations is followed by a horizontal row of gallonage figures, is it not?

A. That is correct.

Q. All right. Now, you say you obtained the numbers representing service stations from reports made by the branch managers?

A. That is correct.

Q. By the way, there are reports made in the ordinary course of business as a matter of routine, and have been for a number of years, by branch managers indicating the number of competitive stations, have there not, in their area?

A. That is correct. That has always been a practice in the company.

Q. Will your proceed and tell us how you arrived at the gallonage figures stated in this exhibit V for identification?

A. Well, in addition—it is also an established practice in our company, and in addition to having this record of the exact number of stations that our competitors might have, we also have an estimate of their gallonages at all of these stations, because, naturally, that is what we consider part of good business to know what our competitors are doing.

Q. Those gallonage estimates are made by the branch managers, are they?

[fol. 1553] A. That is correct.

Q. Has that practice been pursued for a number of years?

A. As far as my experience with the company, Mr. Hall.

Q. When you got these gallonage estimates from the branch managers did you go any further and check for your own purposes the figures that they had given you?

A. Yes; I did, because it had been impressed upon me they wanted as near an accurate figure as they could, and if there would be any methods whereby that this could be checked and not depend entirely on estimates, to do so.

Q. Now, will you tell us what you did to check these estimates with branch managers?

A. Well, the next thing we did was to get the tax figures, figures of the State of California and——

Q. You mean by that, the gallonage figures published by the board of equalization in connection with the state gasoline tax?

A. Yes, sir.

Q. All right. Then go ahead.

A. And so, of course, this was not a survey, as already indicated, within the entire state. It was for a certain district, namely, the Los Angeles basin. So after getting this gallonage from the tax figures we then also, through records at Sacramento, determined the number of cars registered in the State of California. However——

[fol. 1556] Q. Before you come to that, did you reduce those state gallonage figures?

A. Well, I possibly should put that first. I was going to come next with that. Yes; we did, because we were making—this survey was being made strictly on a service sta-

tion consumption basis how much gasoline was being sold.

Q. Retail sales?

A. Retain sales; yes, sir. So our own records would indicate to us what percentage of our business goes through service stations and what is sold as, oh, cleaning fluids or aviation gasolines and other certain types of petroleum products of the gasoline family, you might say. And so we got our indication from that. And, of course, we had no competitive figures available and I again referred to the branch managers as to what their estimates were for these different competitors in their particular field and to in some way prove to my own satisfaction and tie in with my knowledge of this operation down here, why, we could again make some kind of a comparison with the percentages that these branch managers gave us with the percentage that the different competitors were doing as indicated by the state tax figures.

Q. As I understand you, then, you reduced the state tax figures by a proportion which you felt represented the petroleum products that did not move through service stations?

[fol. 1557] A. That is right. Now, in that——

Q. After you had made that deduction, you arrived at a certain gallonage figure for the entire state, did you?

A. That is correct.

Q. Did you make any division between northern and southern California of that figure?

A. Well, yes; we did. I talked to everyone that I could talk to, not only in our company, but state officials and even Los Angeles officials as to what their opinion was as to the consumption of gasoline per car in southern California as compared to what we usually figure per car here in Southern California. Northern California, we were thinking of it north of the Tehachapies. And it was generally conceded, after all the opinions that I was able to secure and tie in with my own observation, that the usage was possibly around 20 per cent greater here in Southern California than in Northern California. And that was partially accounted for also by cars, out of state cars, that are more prevalent down here. But the consensus of opinion of most people of the reason consumption was greater was the fact that they refer to Northern California around the Bay district, and much of the traffic of people going to work up

there are commuters, and here was greater use of automobiles of the people commuting. So I simply had to take that, Mr. Hall, as the opinion of everybody I could talk to. But it did seem to me somewhere near a fair opinion that the [fol. 1558] consumption was greater here.

Q. By that means you then arrive at an over-all gallonage figure for Northern California and an over-all gallonage figure for Southern California?

A. That is right.

Q. Did you make any attempt then to apply the Southern California figure to the particular area embraced in this basin?

A. Yes, sir; I did.

Q. Will you tell me what you did?

A. Well, we first secured from the—yes; we first secured from the State of California the automobile registrations of the entire state and divided those cars into the total gallonage that we had indicated that was sold through retail, through service stations, and that indicated the usage per car. And then for Los Angeles or for this Los Angeles basin survey we added 20 per cent to that to get down and get our figure of what we want and finding out right at this particular place. And then on——

Q. In other words, you took the motor vehicle registrations for Northern California and for Southern California and then you applied those figures to the gallonage figures for Northern California and Southern California and arrive at the per car figure?

A. That is right.

[fol. 1559] Q. Then did you go further and determine in anyway the number of cars or use, the car use, within the area embraced within your survey?

A. You mean the number of cars in the particular area?

Q. Well, you have now arrived at a gallonage figure for Southern California.

A. Yes, sir.

Q. How then did you find out the gallonage figure for the area embraced within your survey?

A. Well, the first thing that I did was to establish the number of cars, of which a record is available through Sacramento, the number of cars registered in Los Angeles County. And that gave me an over-all figure, because in this thing I was checking back continually on estimates that were being given to me by other people. But it was my duty to find out

if these estimates were anyways near correct. So that gave me pretty well to my satisfaction—I had the number of cars to start with for Los Angeles, then I wanted to find out the gallonage that was being consumed in any one of these branches that is mentioned on this exhibit V here. So then the branch manager was asked to give the number of registrations in his particular branch. Now, that was not available, the exact amount it would be for the county, because you can get the county, but they had a very accurate record, and by the time I had all these cars furnished by the [fol. 1560] branch managers that pretty well added up to what I had for the total of Los Angeles County or the Los Angeles basin. So through that we were able to establish then whether or not his estimates were somewhere near right in his particular branch.

Q. Then you got the number of cars for the area embraced within the survey?

A. Yes, sir.

Q. And you have a gallonage per car figure that you determined in that way the gallonage used or the gallonage consumed within the area embraced within the survey?

A. Yes, sir.

Q. Was there any further adjustment made because of the fact that a part of the gallonage goes to bulk storage to serve purchasers who do not purchase through service stations, and I mean by that industrial, commercial and agricultural uses? Was that done?

A. Yes, sir; that was.

Q. Will you tell us about that?

A. Well, that goes back to what I first started to say, then, a moment ago. We first established through our own records, which definitely indicate the percentage of our business that goes to the bulk storage, the taxable figures that goes to bulk storage or to other brackets, like cleaners, solvents, and things of that nature. So, with our own records [fol. 1561] it was established the percentage that went into that. Then for arriving at the competitors' average we again in that case had to take the estimate of our branch managers. And through my knowledge of this it was fairly well established that these branch managers made a pretty accurate average of their records. I had no particular way to check the other records, but the other checks I had made on things that were available to me indicate that they were fairly accurate.

Do you remember how much percentage you allowed
going to bulk storage for the purposes I have stated
previous question?

I don't know whether I can recall the exact recapitu-
n of just how we arrived at it. As I recall, I think it was
d approximately, either 30 or 35 per cent of our busi-
ness went to this so-called bulk storage we are referring to.
then, as our records indicated, I believe—I mean as
estimates indicated, I believe the competitive we esti-
d that 15 per cent, and then with the compilation there,
here we finally arrived at a figure of 25 per cent
this gallonage indicated here in the Basin went to
storage.

Of course, the gallonage figures that are stated for
ion dealers and for Standard Stations, Inc. in Exhibit
r identification were taken from company records,
1562] weren't they?

Oh, yes. It was not necessary to go through that re-
ulation matter. Our own records would show that.
Then, if I understand your correctly, you determined
lonage figure proportionably allocable to the area
d by the survey, from which you subtracted the gal-
figure that went through Standard Stations and
ard's dealer stations?

That is right.

To arrive at the gallonage which must have been dis-
of by the dealer stations of the other companies?

That is correct.

Will you tell me again how you allocate that total
ge figure proportionable to dealer business of the
companies, to the individual companies, in this De-
t's Exhibit V?

ell, that, again, would be back as an estimate from
ords that our branch managers keep as to what they
the activity of their public, or of their particular
would say, instead of "public." I don't mean that.
would take those figures furnished by each individual
them, and would give them serious consideration

Could you check them against over-all figures?

hecked them against over-all figures and them in
dition to that, to see if their percentages are
anywhere near right for the individual

figure, and we found in those, in almost every instance, that the percentage that they arrived at that they were giving there was very close to the estimate that the competitor was doing for the over-all picture for the state, don't you see?

Q. Did you yourself consult with competitive service station dealers on occasion to check these figures?

A. Well, not to any great extent. That is pretty much a long-drawn out affair. But I was so anxious to give them a correct picture as possible on this that I did personally call on a few, or what we considered spot checking, spot checked a number of competitors, and then go back and refer to the branch managers, go in and talk to them and in a discussion find out the gallonage that they were doing, and then went back and looked at the branch manager's record to see how near his estimate was hitting what the man at the station had told me; and that gave us an idea as to whether we were arriving at any ways near an accurate figure as an estimate for the different competitive companies.

Q. In all of this you drew upon your personal experience in the marketing field and in dealing with similar subject matters over the years in the course of your duties with the company, is that correct?

[fol. 1564] A. Well, I think, Mr. Hall, you could not prepare a report of this kind in any other way. It would take a previous amount of experience, no matter who might be called upon to make a survey of this kind, because you would have to have that knowledge or you would never have an idea about the estimates.

Q. This survey which is marked Defendants' V for identification was submitted to the directors of the company, was it?

A. I presented it to the general manager of our dealer sales operations, and I believe he in turn did present it to the directors.

The Court: What was the exact date, or can you fix an exact date as to which these figures in this tendered exhibit relate?

The Witness: Well, they were taken from figures, some average figures, I believe, in two or three months—I think we used two or three months—in 1946, using May, June,

pleted the survey on July the 10th or 12th, somewhere along in that time.

The Court: So this would reflect the condition as about the middle of the year 1946?

The Witness: That is correct; yes, sir.

[fol. 1565] By Mr. Hall:

Q. And your work on the survey was actually in progress between May of '46 and July of '46?

A. Yes, sir.

Q. Following the completion of this survey were you requested to prepare a similar survey for the San Francisco Bay area?

A. Yes, sir.

Q. Before we get into the San Francisco aspect, let me ask you this: How does this Los Angeles area that is reflected in Exhibit V for identification compare in retail sales volume with respect to other areas in the country? [fol. 1566] A. Well, Mr. Hall, the Los Angeles Basin area is considered, of course, the most lucrative market in the world. It is by far——

Q. Well, is it the biggest in the world?

A. Yes, it is.

Q. Do you know how the number of automobiles registered in the Los Angeles Basin area compares with the number of automobiles registered in the states of Oregon, Washington, Nevada and Arizona?

A. May I repeat that again? That is Washington, Oregon, Nevada and Arizona; is that correct?

Q. Yes.

A. There are more cars registered—there were at that time—registered in the County of Los Angeles than there is in those four states.

Q. Now, you say that following the completion of this Los Angeles survey, you were asked to make a similar survey for the San Francisco Bay area?

A. Yes, sir.

Q. When were you first told to undertake that survey; do you recall?

A. Well, it was discussed with the general manager of our dealer sales either the latter part of November, 1946 or in December. It was somewhere in those particular months, and he indicated a survey of that kind was con-

[fol. 1567] sidered, and asked if I could spare the time to—

Q. Well, did he tell you to go ahead with it at that time?

A. I think I finally got the definite word to go ahead about the 15th of December, to proceed with it.

Q. And you thereafter proceeded with the completion of a survey for the San Francisco Bay area?

A. Yes, sir.

Q. Like the survey you had made for the Los Angeles area?

A. Yes, sir.

Q. How long did it take you to complete this San Francisco Bay area survey?

A. Not quite as long as this one, because we had gained certain knowledge in checking this, and, as I recall, we started right after New Years. Oh, it must have been around January 5th or 6th, and we completed it, I think, right at the first of March.

Mr. Hall: I ask that a schedule entitled, "San Francisco Bay Area Competitive Service Station Report," be marked for identification with Defendants' letter next in order.

The Clerk: Defendants' Y, marked for identification.

The Court: The other one was "V"?

Mr. Hall: Yes, your Honor, "V."

The Court: Just a moment. I think we had better have [fol. 1568] a little discussion here about the technique of marking these. We ought to have a Greek alphabet. It is a long one. Our alphabet isn't going to cover all of these.

The Clerk: We can make it double A or triple A.

The Court: Then you have to mark it three times. Can't you mark if as A-1 or A-2?

Mr. Hall: I don't think it will run into the triple As, your Honor.

The Court: It will not. All right. We have gone as far as KKK several times, and I was just thinking about that. So long as I have that assurance, we will go on.

By Mr. Hall:

Q. I show you the document which has been marked Defendants' Exhibit Y, for identification, and ask you if that is the survey that you have prepared for the San Francisco Bay area.

A. Yes, sir.

Q. And the pattern followed and the methods pursued were substantially the same as you have indicated with respect to the Los Angeles Basin survey?

A. That is correct, sir.

Q. On this San Francisco Bay area survey, are these branches in more than one sales district?

A. Yes, sir. It shows for itself. It is practically explanatory here. You see the first station there, and it ends here—one, two, three, four, five, six, seven—the seventh [fol. 1569] column is the end of the Oakland district of the Standard Oil Company; that is, the branches.

Q. Well, to make it short, can you tell us approximately what the geographic area was which was covered by the San Francisco survey?

A. Yes, sir.

Q. What was it?

A. All of the city of Oakland to the boundary line between Oakland and San Leandro, and it also included the small town of El Cerrito and Richmond, California. On the San Francisco side of the Bay it reached down as far and including Palo Alto, as well as covering the entire city of San Francisco and all of the towns between San Francisco and Palo Alto, and the cities of Sausalito and San Rafael in Marin County. And that is all.

Q. When that survey was completed, was it presented by you to the manager of the dealer sales department?

A. That is correct, sir.

Q. And is it your understanding that it was passed on to the directors of the company?

A. I believe that is correct, yes, sir.

Mr. Hall: Defendants offer in evidence the documents which have been marked, or, the maps which have been marked Defendants' Exhibits W and X, for identification.

Mr. Dixon: Government objection No. 1, your Honor.

[fol. 1570] The Court: Overruled.

The Clerk: W and X admitted in evidence.

Mr. Hall: Defendants now offer in evidence the documents which have been marked as Defendants' Exhibits, for identification, V and Y.

Mr. Dixon: Government objection No. 1 is renewed to these exhibits and as to all of the testimony of this witness.

The Court: Before ruling upon these, I desire to add one

observation which I did not make yesterday for the very obvious reason that the character of the testimony was not revealed, and many a time the questions themselves do not necessarily disclose the full import of the testimony. However, an examination of the last two exhibits, V and Y, discloses one other reason why they are admissible, and why the testimony is admissible, and that is that they present for the two areas, the Los Angeles Basin and the San Francisco Bay Area Basin, not only actual figures relating to number of service stations owned by the oil companies, the majors and independents,—that is the language we have gotten into the habit of using around here in the various discussions that have been carried on, especially when we were discussing the Sharkey Bill and the other Bills, and it has become rather a pattern and I am going to use it—it not only discloses the number of service stations [fol. 1573] either owned, or—what was that word we used yesterday?

Mr. Dixon: Influenced.

The Court: —influenced by the majors, such as the Standard Oil Company, The Texas Company, Shell Oil, Richfield, General Petroleum, and so forth, and the minors which are grouped under one heading, but we are given percentages of gallonage, both total for the area and for the particular branches. Those figures have a distinct bearing upon the question of the amount of restriction, assuming that these practices result in restriction of competition and restriction of the flow of commerce because, as I said yesterday, the amount of such restriction would show the effect of the practices, and the effect of the practices is material, both under the Sherman Act, in arriving at the conclusion whether the restraint is reasonable or unreasonable, and in arriving at the conclusion under the Clayton Act, whether there is a substantial lessening of competition as a result of them or a tendency to create a monopoly in any line of commerce.

In that respect I want to make this further observation, that "the line of commerce" is a broad and not a narrow term and that it should be interpreted not with relation to a particular outlet, but with relation to the entire picture. I try to get away from that trite expression, but, gentlemen, there is no other word that exactly covers it. There is the word, the German word I previously referred to, Gestalt,

[fol. 1572] and the word "configuration," but that is more of an anthropological term used by students of various cultures. The word "picture" is so familiar to us and is meaningful and takes into consideration each circumstance that affects the particular situation. So the determination of a monopoly in any line of commerce cannot be made to depend solely upon the fact that certain outlets are closed, because, without indulging in what I always consider an unfair argument, what we used to call in our days of college and our student days a reductio ad absurdum—if we say interfering with any outlet is in itself *is* a monopoly, then we find ourselves in the absurd position of contending that, assuming you brought out one outlet, that you have a monopoly as to that particular station. For instance, let us take a merchandising company, and let us illustrate it with one of the large stores here. For instance, we might take the May Company, which I happen to know, or, let's not take the May Company but let's take a more universal organization. Let's take Sears, Roebuck & Company or Montgomery Ward. It is common knowledge that they own establishments all over the country. It is also well known that they control the supplies that go into their branches, which they use as outlets. Of course, they own those branches, but let us assume that they did not own the branches and that they had them under one of these various [fol. 1573] forms, a TBA form, and that the branches were operated on that basis. To my mind it would be absurd to contend that under such circumstances the control of that one outlet would constitute a monopoly in the sense of the law. That is why I take the words "in a line of commerce" to mean a line of activity, not a small segment.

For those reasons, also, I believe that this testimony is material in arriving at the conclusion as to the effect of these practices, assuming for the moment that they are shown by the evidence to have existed, and that both the written contract and the practices which attended them, as testified to orally, showed the effect, then the question still remains whether the effect was an unreasonable restraint or a substantial lessening of the competition or the creation of a monopoly in a particular line of commerce. I feel for that reason also that these percentage figures are material as bearing upon that subject.

Mr. Dixon: If the court please, I assume your Honor will not object if we rise during these discussions?

The Court: No, I don't.

Mr. Dixon: And with comments in trying to help the court.

The Court: No. I am not making them to hear myself talk. I am tired of hearing myself talk after twenty-two years, or almost forty years, because I had seventeen years [fol. 1574] of practice of law before that. So my talking has no particular significance except to clarify my own thoughts and to discuss with counsel my reasons. And that has occurred to me should be added to what I said yesterday.

Mr. Dixon: We appreciate your Honor's remarks, because it does aid counsel in the trial of the case in aiding the court or endeavoring to aid the court with reference to cases we feel may bear upon the point your Honor brings up or for discussion at the time of his comments. In connection with that we would like to refer your Honor to the *Signode Steel Strapping Co.* case, 132 Fed. (2d) 45, and the language of the court on page 54 of that opinion. It is referred to in our brief, your Honor.

The Court: I don't have that out here. Will you get me 132 Fed. (2d) please.

Mr. Dixon: The language referred to that we want to direct your Honor's attention to is on page 54 of the decision, in which the court discusses what constitutes a substantial lessening of competition, and states as follows, and I am now quoting:

> "There is reason in the position that the substantiality of the lessening of competition is to be judged with reference to the effect of the trade practice upon the volume of business controlled by the person en- [fol. 1575] gaging in it, not with reference to the proportion which that business bears to the entire volume of such business throughout the country."

Then the court cites the Oxford Varnish Corporation case as authority for that proposition, a Supreme Court decision.

The Court: On what page is that, again?

Mr. Dixon: Page 54, your Honor. "That this type of comparison, again to repeat our previous position, is wholly irrelevant and immaterial to the issues raised in this case,

since the commerce affected here is the commerce of Standard with these dealers.

The Court: Yes, I am familiar with that case. That is Judge Parker's decision, isn't it?

Mr. Dixon: That is right.

The Court: But, you see, here again you are falling into the error I referred to yesterday, and that is the error of wresting a statement from its context. What follows shows what he is talking about, and he is speaking of the percentage related to the national business. We are not talking about that. Here is what he says, and, this again was a Federal Trade case.

Mr. Dixon: Yes, that is a Clayton Act case.

The Court: It is another Federal Trade Commission case, and the court was dealing with administrative procedure, and so the method is entirely different than when passing [fol. 1576] on facts such as determined by us here. This is the language of the entire paragraph:

> "There is reason in the position that the substantiality of the lessening of competition is to be judged with reference to the effect of the trade practice upon the volume of business controlled by the person engaging in it, not with reference to the proportion which that business bears to the entire volume of such business throughout the country. * * * If a dealer by such unfair trade practice as is here involved restrains competition with respect to his customers, he ought not be permitted to continue it because his portion of the national business is small; and we do not think that such was the intention of Congress in the requirement of the Clayton Act that the lessening of competition be substantial."

Then he cites the National Labor Relations Board v. Fainblatt case.

> "We need not decide this point, however, as we are of opinion that, even though the sales of wire and strapping throughout the country be considered, it cannot be said that the findings of the Commission as to substantial lessening of competition are without support in the record."

[fol. 1577] So we have two things there. He has made a statement arguendo which he says he is not deciding. Then he says he does not need to decide it for another reason, that he is merely reviewing the question after a finding by the court.

Now, in the question before me I am not making a review of anything. The question before me is a primary question of whether it is admissible in evidence.

Incidentally, I may say that personally I do not believe that the Labor Relations cases can be applied to anti-trust cases in interpreting the meaning of the commerce clause, because the Supreme Court, in the case which originated here in this district, the Santa Cruz case, held that percentage does not count; that under the National Labor Relations Act, and the ruling is the same under the Wages and Hours Act, the object of the Congress being to reach any person that could be reached through its legislation, and as I think Mr. Justice Douglas said in respect to wages and hours, to reach the substandard wage group, that the fact that the persons reached are engaged in activities which are an infinitesimal part of commerce is not material. So those cases do not apply. And in the Santa Cruz case, those of us who know the history as it appears from the decision in the Ninth Circuit, remember there was a division of the court and that Judge Wilbur was of the view [fol. 1578] that unless a substantial, and he put it in the form of a majority, portion of the business was in interstate commerce, or a majority of the goods manufactured be transported into interstate commerce that the National Labor Relations Act should not apply. Then certiorari was granted by the Supreme Court solely on that basis, because they had not decided to that time what percentage of interstate commerce must be affected by the particular industry before it can be said to come within the Act. The Supreme Court decided it wouldn't make any difference what the percentage was. And they held in the famous Kirschbaum case that the elevator boys or elevator men working in a flat building in which flats were occupied by garment workers, garment manufacturers, who manufactured garments that went into interstate commerce, they held that the elevator operators and janitors were helping to create goods that went into interstate commerce; that is, those that were keeping the place clean, and, to

use an old English expression, those who were lifting the workers from the ground floor into the offices above came under the Act.

I have talked longer than I intended to, but so long as you brought this up I wanted to make this observation. I still believe that substantiality, just as unreasonableness, is a matter to be determined with relation to the particular territory with which we are concerned, and if you are charg- [fol. 1579] ing a practice which affects these eight western states, then it is material—I am not saying it is decisive; I am not deciding the matter—it is material to know the relationship that the stations, the number of stations has to the competitive stations; also, the relationship which the products, whether they are petroleum products or accessories, has to the competitive picture in the field, as shown by the sales of others. With that, I will stop. Now, we will go back. There is nothing before the court.

The Clerk: Are the exhibits admitted?

The Court: Yes, I should admit them.

The Clerk: Exhibits V and Y in evidence.

By Mr. Hall:

Q. Did you make any further surveys of this character, Mr. Travis?

A. You mean——

Q. I mean after these were completed, did you make any further surveys?

A. No, sir, no surveys after that.

[fol. 1580] Q. I think you said that you were presently assistant manager of the sales equipment division?

A. Yes, sir.

Q. Of the home office?

A. Yes, sir.

Q. I want to ask you just one question about another subject.

This is a little out of order, your Honor.

The Court: Well, that is all right.

Mr. Hall: But this witness is from San Francisco and wants to get back.

Q. There are three accessories warehouses from which tires, tubes, batteries, and accessories are distributed in the State of California, aren't there?

A. Yes, sir.

Q. There is one in Phoenix, is there not?

A. Yes, sir.

Q. That Phoenix warehouse makes shipments or makes distribution of tires, tubes, batteries, and accessories to a small area in California, does it not?

A. Yes, sir.

Q. Is that in the vicinity of Needles?

A. Yes, sir.

Q. What is the proportion or relation between the quantity supplied to that Needles area by the Phoenix ware-[fol. 1581] house as compared with the quantity of tires, tubes, batteries, and accessories furnished to other points in California by the three California warehouses?

A. Well, it is so small, Mr. Hall, it would be almost impossible to arrive at a percentage. The easiest way to answer it is that it is infinitesimal; it is just practically nothing.

Mr. Hall: That is all. You may take the witness.

The Court: I think we will take a short recess so as not break up the cross-examination of this witness.

(Short recess.)

The Court: Just one minute, gentlemen.

(Brief discussion by court and counsel as to probable duration of defense.)

The Court: All right.

By Mr. Hall:

Q. In describing the area that was covered by your San Francisco survey did you omit the mention of certain cities that were covered by that survey?

A. Yes; I did, Mr. Hall.

Q. What were the additional cities that you have not mentioned that were covered by that survey?

A. Berkeley, Piedmont and Albany.

Mr. Hall: You may take the witness.

Cross-examination.

By Mr. Dixon:

[fol. 1582] Q. Mr. Travis, I believe you testified you were directed to prepare this survey, but I do not believe I

heard you testify—if I did, I have forgotten—who directed you to prepare it?

A. Mr. E. J. McClanahan.

Q. And what is his position with the Standard Oil Company?

A. Vice-president of the sales.

Q. Did he indicate to you that this survey was to be used in this lawsuit at the time you were requested to prepare it?

A. No, sir. I never even heard of this lawsuit until some few months ago.

Q. What conversation did you have with him about the reasons, if any, for preparing this survey?

Mr. Hall: You are speaking of the Los Angeles survey?

Mr. Dixon: Both of them, Exhibits Y and V.

A. Well, particularly the—I will answer both Y and V.

Q. Was there a difference between the reasons for preparing——

A. Well, only this, inferentially——

Q. —Y as against V?

A. No, sir; only inferentially.

Q. Go ahead.

[fol. 1583] A. Which would you like me to answer, then?

Mr. Dixon: Both of them. Do you have my question now?

The Witness: All right. Read me the question.

Mr. Dixon: Would you read it, Mr. Reporter?

(Question read by the reporter.)

A. No, sir.

Q. What reasons did he give you for preparing both of these surveys?

A. The instructions were very brief. He indicated to me that he thought the competitive situation in the Los Angeles Basin was very severe and that he would like for me to go to Los Angeles and draw on my past experience and lay out a pattern for service station coverage; and in laying out that pattern he had in mind only to show the percentage the competitor had, and that would give them that part.

Q. In other words, with reference to the preparation of the Los Angeles Exhibit V, the reason given you by Mr.

McClanahan was that the competitive situation in that area was severe?

A. That is right.

Q. Was it any different than from any other portion of the seven states in which Standard operates?

A. Not to any great extent, although that was not discussed with me, because they spoke of this large volume involved down here.

[fol. 1584] Q. This was, then, a larger market, was it?

A. Yes, sir.

Q. Competitivewise?

A. Yes, sir.

Q. And the competition was, in fact, as you put it, more severe in the Los Angeles area than in the other markets in which Standard operates?

A. He didn't state that to me but I drew that conclusion.

Q. Was that the same reason given for the preparation of the San Francisco Exhibit Y?

A. There was less discussion on that. The instructions were simply to lay out a survey similar to the one made in Los Angeles, to cover the San Francisco Bay area.

Q. But he did not give you any additional reasons for it?

A. No, sir.

Q. So you do not know why these two areas happened to be picked out for the purposes of making this so-called competitive survey?

A. No, sir.

Q. And you have never made any survey of any of the same situations, and by that I mean the so-called competitive situation of Standard with relation to the other companies, in any other part of the seven states in which [fol. 1585] Standard does business, have you?

A. Yes, sir.

Q. In addition to these?

A. Yes, sir.

Q. Well, when did you make those surveys?

A. Well, as I stated in my testimony earlier, any time that we were preparing a proposal for building a new service station in a particular area.

Q. Just a minute. Maybe you did not understand my question. Were the surveys that you made comparable in

scope and character to those that are represented by the surveys that you made in Exhibits V and Y?

A. No, sir.

Q. So that these are the only two surveys of that character and scope that you made for the company, is that correct?

A. That is correct.

Q. It is a fact, is it not, Mr. Travis, that Standard sells more gasoline through retail outlets in the western area than any other company?

A. That I am unable to answer because I am not——

Q. Well, do you know?

A. No; I don't know.

Q. All right. Of course, you couldn't answer unless you knew.

[fol. 1586] A. That is right.

Q. Now directing your attention to Exhibit V—do you have it?

A. No; I haven't. I haven't one. Thank you.

Q. I believe you testified that the only actual figures that you had—by "actual" I mean figures taken from actual sales records—of gasoline were those of gasoline sold to Chevron stations and Standard Stations, Inc., is that correct?

A. That is correct.

Q. So that all of the other figures that you have in these exhibits of sales purported to be made by these other companies mentioned in Exhibits V and Y are based upon assumptions that you have mentioned, is that correct?

A. Now, wait a minute. I don't know. I would like to have that question again.

Mr. Dixon: Read the question, please.

(Question read by the reporter.)

A. That is correct.

Q. And included in those assumptions are the reports that you say you got from the district managers, the district managers of Standard Oil Company, concerning the competition of other companies in the districts in which they were in charge, is that correct?

A. That is correct.

[fol. 1587] Q. Do you have those records, Mr. Travis, those records?

A. No; I haven't.

Q. Well, who has them? Withdraw that. Did you examine those records or go into those records in preparing this survey?

A. Yes, sir.

Mr. Hall: Wait a minute, wait a minute. That assumes a fact not in evidence. I don't know that he testified to any records handed in.

Mr. Dixon: I think he did, your Honor.

Mr. Hall: With respect to gallonage, I submit that he did not. And my question was——

The Court: Well, he may ask him if he did, whether he testified to it or not, and get the basis of the figures. All right.

Mr. Dixon: Will you read the question, please?

(Question read by the reporter.)

A. Well, the definite records I went into was the ones showing the number of service stations there.

Q. Well, those were written records, were they, or reports?

A. That is right.

Q. Of the service station managers?

A. No; of the branch managers.

[fol. 1588] Q. I mean of the district managers.

A. No; branch managers.

Q. Of the branch managers?

A. Yes, sir.

Q. You mean by that a branch manager of, say, the Hollywood branch?

A. That is correct.

Q. Do you have those reports and are they available?

A. No. I didn't even take them away. They are possibly still in those particular offices, because they are maintained as a running record. It is a record, as I have testified, I believe, that we have always kept those records.

Q. But you examined those records yourself——

A. Yes, sir.

Q. ——did you, in preparing this survey?

A. Yes, sir.

Q. And on the basis of those records you determined the number of stations of these companies that are mentioned and listed on Exhibit V?

A. Yes, sir.

Q. Would you make those records available to the Government, Mr. Travis, on which you based this survey?

A. I have it in my possession.

Q. Well, will you produce them in court so that the Government may examine them?

[fol. 1589] A. Well, I don't know.

Q. From which you made this survey represented by Exhibits V and Y?

Mr. Hall: Well, Mr. Dixon, if you will permit me to make a statement with respect to that?

Mr. Dixon: Yes, surely.

Mr. Hall: Those records, I think there are several thousand of them in that white box over on the table, but I want to tell you this, Mr. Dixon, that those records are prepared in this way: They are on sheets of paper that are changing from time to time, instructions to the branch managers being that they be kept up. So that whether we could give you the records as to the exact period when Mr. Travis was working, I doubt it, because the records themselves, under instructions to the branch managers, must be kept up to date, meaning by that, that they are taking the records and adding and subtracting them all along. Is that correct, Mr. Travis?

The Witness: That is correct.

Mr. Hall: Now, the records, such as they are, I believe that most of them are in the box over on the table and they are available to inspection by anybody.

The Court: They are available to counsel. Those are the records which I noticed have not been removed from court since we began. So Mr. Dixon may look at them.

[fol. 1590] Mr. Hall: Oh, certainly, your Honor.

The Court: And then if he desires some more that are available, why, he may ask for them later on. All right.

[fol. 1591] By Mr. Dixon:

Q. Now, Mr. Travis, do you know how many Chevron Dealer stations the Standard Oil Company sells its gasoline to in the seven western states in which Standard does business?

A. No, I don't know the exact record.

Q. Do you know the number of stations that are company operated, that is, operated by the Standard Oil Company in the seven western states?

A. I think approximately a thousand.

Q. I have noticed by referring to Exhibit V that included in your totals of the stations involved in the exhibit as operated by Standard Stations, Inc. is included the figure 291. Does that represent the number of company-operated stations in the Los Angeles Basin that you considered in making this compilation?

A. That is correct.

Q. I notice that in Exhibit V the figure 228 is listed under the heading of Chevron dealers. Does that represent the number of Chevron dealer outlets that you took into consideration in making this summary in the Los Angeles Basin?

A. Standard Oil dealer outlets, you mean?

Q. Yes, Chevron dealer outlets.

A. Yes, that is correct.

Q. By the way, that is what you mean, don't you?

[fol. 1592] A. Yes. I didn't catch your statement there of Chevron dealers.

Q. I am sorry.

A. I mean Chevron dealers.

Q. Yes. So that in the Los Angeles Basin, as represented on Exhibit V, the Standard Oil Company has only 228 dealer outlets; is that correct?

A. That's correct.

Q. Directing your attention to Exhibit Y, under the summary of the San Francisco Bay Area I notice that under the Chevron dealer heading you list the figure 135. Does that figure of 135 represent the total Chevron dealer outlets in the San Francisco Bay Area?

A. Yes, sir.

Q. I notice that you list under Standard Stations, Inc. in your total the figure 163. Does that represent the total number of company-operated stations in the San Francisco Bay Area?

A. Yes, sir.

Q. So that by totaling the company-operated stations in Exhibits V and Y, you represent in those surveys, or those exhibits and in your survey you are including 454 company-operated outlets; is that correct?

A. If that is the total of the two, that is correct.

Q. And you are including only 363 Chevron or inde-

[fol. 1593]

A. Well, if you have totaled it there. It is the total of those two.

Q. If I am wrong in my computations, don't hesitate to correct me. I am just taking the figures here.

A. Do you wish that I should add it up before I answer?

Q. That is right.

A. The total of the two dealers is 454.

Q. And do you agree with my addition on the total of Chevron outlets?

A. Well, I might check it. 363.

Q. All right. Now, again referring to Exhibit V, will you tell us what percentage of the total volume of available gallonage as represented by your estimates on Exhibit V, in the Los Angeles Basin is purportedly secured by the seven companies mentioned in that exhibit, including the Standard Oil Company, that is, the Chevron dealers and Standard Stations, Inc.

A. You want the total of the percentage of those two,—of the whole?

Q. Yes. Do you understand my question?

The Court: I think he understands it.

By Mr. Dixon:

Q. Will you give me the percentage, please?

[fol. 1594] A. The total of those two?

Q. No, I don't want the two. I want the total of the seven companies, including the Standard Oil Company, that are listed in the survey of the Los Angeles Basin, Exhibit V.

A. Well, I would have to add them up. I have them right at the right of that sheet.

Q. Would it be——.

A. I would be glad to do it.

Q. —56.4 per cent?

A. I don't know. I will be glad to add it.

The Court: If it is just a matter of computation here, you can compute it, and I will take your word for it, Mr. Dixon.

The Witness: It is on there.

Mr. Dixon: May the record then show that, according to my addition, it represents 56.4 per cent of the total business done in the area.

The Court: That includes the seven companies?

Mr. Dixon: That is right.

The Court: Including Standard?

Mr. Dixon: Yes, your Honor.

The Court: It excludes the minors?

Mr. Dixon: That is right.

The Court: And, in other words, it includes all the major [fol. 1595] companies?

Mr. Dixon: That is right, your Honor.

The Court: If for any reason that gives you any comfort, all right. I can't see it. We are not trying here a case against any other company. There is none pending so far as I am concerned in my court anyway.

By Mr. Dixon:

Q. Can you state what the percentage of business of the seven companies mentioned in your Exhibit Y, that is, exclusive of the minor and secondary companies, is of the total gallonage available in the San Francisco Bay Area?

A. That would have to be totaled also.

Mr. Dixon: May the record show that, according to my computation, it is 76.06 per cent of the total volume of estimated gallonage in that area.

That is all.

Redirect examination.

By Mr. Hall:

Q. In referring to the severity of competition experienced in the Los Angeles Area, you didn't mean to indicate that competition was not severe in other areas, so far as Standard Oil Company of California is concerned?

Mr. Dixon: I object to that.

The Court: It calls for a conclusion.

Mr. Dixon: He didn't prepare any surveys on it.

[fol. 1596] The Court: He has already stated the difference between the Los Angeles Area and the others because of what he described as, I believe the most remunerative basin, with the large number of automobiles, and so forth. I will sustain the objection to the question.

By Mr. Hall:

Q. Are the figures, the gallonage figures, shown in Exhibits V and Y on an annual basis?

A. No; that is a monthly basis.

Mr. Hall: Thank you. That is all.

Recross-examination.

By Mr. Dixon:

Q. Well, is this a typical month that you took in making this survey, Mr. Travis, or did you just make this survey at the time because you were told to make it at this time?

A. I was not told except what I told you, just to make the survey.

The Court: I think the witness' testimony indicates it was made over a period, that it related to a period beginning in May and concluding in July, I believe, and was taken as a typical month.

Mr. Dixon: Then may I ask the witness this question——

The Court: Isn't that correct?

The Witness: That is correct.

By Mr. Dixon:

Q. What figures did you take,—what particular month? Did you take the month of May?

[fol. 1597] A. I don't recall for sure, but I believe we did. I think we averaged those three months in there, but I am not sure.

Q. What three months, Mr. Travis?

A. It would be the—or two months, rather, because we finished in July.

The Court: May and June?

The Witness: May and June. I believe we took those averages. I think it was basically May, and then there was an average taken.

By Mr. Dixon:

Q. Did you make any comparison of sales data or figures which you used for the Standard Oil Company for those months, the months of May and June, with the sales of the company for the total year?

A. Of the other companies?

Q. Of a comparable period.

A. Of the other companies?

Q. No, of your own company.

A. Oh, yes, we did.

Q. And what was the figure for the total sales for the year preceding the month, the end of the month of June of 1946, when you made this survey?

A. That I haven't available.

Q. Do you have the information available, and can you furnish it to us?

[fol. 1598] A. I presume that our statistical department can. I haven't it available in my particular office, no.

Q. Do you have it available, or was it available to you when you made this survey?

A. That is correct.

Q. Will you submit to us the information that was available to you when you made your survey, giving us the figures requested? Will you do that, Mr. Travis, please?

Mr. Hall: That isn't clear to me, what is wanted. It isn't clear to me what you want him to produce.

By Mr. Dixon:

Q. Do you understand what I am asking you to produce, Mr. Travis?

A. I think you want either the June or May figures of the company, for that particular period I used.

Q. As I understood your testimony, Mr. Travis, you said that you compared this with a yearly figure of sales of the Standard Oil Company; is that correct?

A. I compared it with these two months that are under discussion.

Q. In other words, if I now understand your testimony, you did not ascertain whether the two months in question on which your figures are based was representative of the average month of sales for the Standard Oil Company in the areas in which you were making your survey? Is that correct?

A. We did use that as weighting it for the entire year, [fol. 1599] yes, sir.

Q. I still don't understand your answer.

A. Maybe I don't understand the question, then.

Q. I am trying to ascertain, Mr. Travis; and if I am not making myself clear, please say so, whether you determined what the sales were of the Standard Oil Company in these two areas for the year, the entire year; that would be from

July 1, 1945, to June 30, 1946, in computing these surveys, Exhibit Y and Exhibit V.

A. As I recall, we considered the more normal time, after the close of the war, and so on, would be not in 1945, and we used this as a weighted average from January 1st until the time we concluded this in 1946.

Q. You mean, then, your took a period from January 1, 1946 through June 30, 1946 in computing these figures; is that correct?

A. Not in computing them, but to see this was a representative month.

The Court: Would the term "weighted average" correctly apply to these figures?

The Witness: Yes, sir, it would.

The Court: These are a weighted average for what?

The Witness: January 1946 until the completion of this, in July of 1946, the six months.

The Court: And the average is for a month?

[fol. 1600] The Witness: That is right.

By Mr. Dixon:

Q. In other words, this is a weighted average in this area——

A. That is right.

Q. —for your figures, for the months January 1, 1946 to July 1, 1946?

The Court: Let's add the word "monthly,"—a monthly weighted average.

By Mr. Dixon:

Q. Can you give us your monthly figures, then, for this area?

A. I assume those are available.

Q. Will you produce them, please?

Mr. Hall: I think those are already presented.

Mr. Dixon: Not for this area, Mr. Hall. I am asking for this area.

Mr. Hall: I would like to examine the witness, then when you are done. Are you?

Mr. Dixon: Yes, I am through.

Redirect examination.

By Mr. Hall:

Q. Now, have you preserved the pencil notes and other memoranda which you used in compiling this survey?

A. No, sir.

Mr. Hall: We will do our best to get what you want, Mr. Dixon. I still don't understand what it is, but maybe the [fol. 1601] witness does and in consultation with him I may be able to get it.

The Court: You may discuss the matter informally. I have not been asked to make any orders, so if these figures are in some other document, then you may call Mr. Dixon's attention to them.

Mr. Hall: Yes, your Honor.

The Court: And if not, why, you can discuss it further.

Mr. Hall: I have responded to so many requests of the government on figures I am a little confused myself.

Mr. Dixon: Mr. Hall has been very co-operative, your Honor.

The Court: I will give you until 2:00 o'clock.

Mr. Hall: We will not be able to do it by then.

The Court: Not to have the figures. You will have until Tuesday to get the figures. I mean I will give you this time now to discuss the matter, to see if he already has them or if you can supply others.

The Witness: Your Honor, I believe I might clarify this.

The Court: You do?

The Witness: Yes.

The Court: Go ahead and try.

The Witness: We actually used the May figures for compiling this, and we only referred to a total figure to see if that was a typical month. The figures used in here was for [fol. 1602] May, 1946.

The Court: In other words, you didn't average the figures by the month. You took that month and then compared it with the early figures in order to see if that average coincides with what you would have arrived at if you just took the yearly figures and divided them by 12.

The Witness: In this case it was six months which we took.

The Court: Or six months.

The Witness: Yes. But we didn't use those figures in the compilations. We used the May figures in the compilations.

Mr. Dixon: I understand that, but what I want to get is the figures in this area for the six months period.

The Court: You mean the total, or for each month?

Mr. Dixon: By months.

Mr. Hall: I am quite uncertain whether these figures have been preserved.

The Court: We are not getting anywhere just now. I think I will leave that to you.

Mr. Hall: I want to state, your Honor, that this is a segment of an entire area. Now, we keep figures at the company of an entire area by states, and counsel has been furnished the state figures. This is a fraction of a state, and it was undoubtedly segregated at one time, but whether [fol. 1603] we have those now I am not at all certain.

Mr. Dixon: I think your Honor understands why I want the information.

The Court: I don't know. I don't attempt to speculate on your reasons, and I don't want you to speculate on mine, because if I choose to give them to you, I give them to you. I think you gentlemen can get together. At any rate, I have not been asked to make any order, and I have not made any.

Mr. Dixon: I would like the record to show that I asked the witness for those figures.

The Court: Yes, that is all right.

Mr. Dixon: And he will endeavor to produce them, as I understand.

Mr. Hall: May I ask this with all timidity and humility: Do you want this witness to remain away from San Francisco so that he may again appear on the stand next week and give those figures?

Mr. Dixon: No. If you will make the figures available to us, it is entirely possible that he will not have to return.

The Court: He is at the end of a telephone, I presume. We will not keep him here longer than necessary, although so far as the weather is concerned I think it is almost as cold here now as it is in San Francisco, so he couldn't [fol. 1604] complain about the difference in weather. These people from San Francisco always seem to complain about the Los Angeles weather.

Mr. Hall: That is all.

Mr. Dixon: That is all.

The Court: Very well. You may step down. 2:00 o'clock, gentlemen.

(Whereupon at 12:30 o'clock p. m. a recess was taken until 2:00 o'clock p.m. of the same day.)

[fol. 1603] Los Angeles, California, Friday, May 21, 1948.

2:00 P. M.

The Court: All right, gentlemen, proceed.

Mr. Hall: Mr. Dern.

JOHN P. DERN, called as a witness by the defendants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: John P. Dern, D-e-r-n.

Direct examination.

By Mr. Hall:

Q. What is your present occupation, Mr. Dern?

A. An analyst with the economics and statistical department of the Standard Oil Company.

Q. What was your college and collegiate training as it may have related to the subject of economics?

A. I studied in economics, accounting, statistics and allied subjects as an undergraduate at Stanford University, graduating in '37; and then I took a two-year graduate course, leading to the master's business administration degree in 1939.

Q. And that was at the Stanford graduate school of Business Administration?

A. That is correct; that is correct.

Q. Will you tell us what your employment was at graduating from the business school?

[fol. 1606] A. I was associated with Standard Oil, beginning in 1939.

Q. What was the nature of your first employment with them?

A. I was associated with the cost analysis division of the comptroller's department. We were engaged in making studies on a cost basis of operations of the company as related to industry and so on.

Q. And that extended to various operations of the company, did it?

A. That is correct.

Q. Did the time come when you joined any division of the marketing department?

A. Yes. I was connected with the organization in cost control division of the marketing department.

Q. What was your title in that department?

A. Analyst.

Q. Analyst?

A. Correct.

Q. What happened then?

A. I left that for my experience in the military during the war.

Q. What was that experience?

A. I was connected with the ordnance department of the Army Air Forces.

[fol. 1607] Q. What rank did you hold?

A. Major of ordnance.

Q. At the end of the war did you rejoin the Standard Oil Company?

A. I did.

Q. And since rejoining the company what have been your duties in general and your position?

A. I am in charge of the special studies section in the economics department. We are concerned with making statistical studies and analytical surveys connected with business in general, and in particular in regards to the petroleum industry.

Q. In the course of your duties have you made studies from time to time of industry trends in relation to gasoline, lubricating oils and tires, tubes, and batteries?

A. Yes, sir; very definitely.

Q. Was that in connection with problems arising in connection with the marketing of the company's products?

A. That is right.

Mr. Hall: I ask that there be marked for identification with defendants' letter next in order, as one exhibit, the pages which I now hand to the clerk and which are entitled at the head of the page "Gasoline Sales."

The Clerk: Defendants' Exhibit Z marked for identification.

[fol. 1608] Mr. Hall: I have an extra copy of this that I

will hand your Honor if you desire it in order to follow the testimony.

The Court: All right.

Mr. Hall: I ask that there be marked as defendants' next in order schedules which I now hand the clerk, bearing at the top the notation "Automotive Lubricating Oil Sales."

The Clerk: Defendants' Exhibit AA marked for identification.

Mr. Hall: I ask that there be marked as defendants' exhibit next in order the sheets which I now hand to the clerk and which are entitled at the top "Tire Replacement Shipments."

The Clerk: Defendants' Exhibit BB for identification.

Mr. Hall: I now ask that there be marked for identification as defendants' exhibit next in order the sheets which I hand to the clerk and which bear at the top the notation "Replacement Battery Sales."

The Clerk: Defendants' Exhibit CC marked for identification.

Mr. Hall: I now ask that there be marked for identification as defendants' exhibit next in order the sheet which I hand to the clerk bearing in the upper right-hand corner the word "Gasoline."

The Clerk: Defendants' Exhibit DD marked for identification.

[fol. 1609] Mr. Dixon: What is the heading?

The Clerk: "Gasoline."

Mr. Dixon: Gasoline?

The Clerk: "Gasoline" in the upper right corner.

Mr. Hall: I ask that there be marked as defendants' exhibit next in order a sheet which I hand to the clerk which bears in the upper right-hand corner the words "Auto Lubricating Oils."

The Clerk: Defendants' Exhibit EE marked for identification.

Mr. Hall: I ask that there be marked for identification as defendants' exhibit next in order the sheet which I hand to the clerk bearing in the upper right-hand corner the word "Tires."

The Clerk: Defendants' — FF marked for identification.

Mr. Hall: I ask that there be marked for identification as defendants' exhibit next in order the sheet which I hand to the clerk bearing in the upper right-hand corner the word "Batteries."

The Clerk: Defendants' Exhibit GG marked for identification.

Mr. Hall: I ask that there be marked for identification as defendants' exhibit next in order the sheet which I hand to the clerk bearing at the top of the sheet the words "Retail Sales by Standard's Dealers as Per Cents of Estimated [fol. 1610] State Totals (Seven Western States)."

The Clerk: Defendants' Exhibit HH marked for identification.

[fol. 1611] Q. Have you prepared certain compilations of figures and certain graphs, Mr. Dern, for the purpose of exhibiting an opinion as to whether Standard's retail sales through dealers have increased or decreased over a period of years in proportion to the industry?

A. Yes, I have.

Mr. Dixon: I am sorry, I didn't get that question. Will you read the question and the answer, please?

(The question and answer were read.)

By Mr. Hall:

Q. Now, I show you, Mr. Dern, a series of schedules which have been marked Defendants' Exhibit Z, for identification, and ask you if those schedules were prepared in connection with the research to which you have referred, under your direction?

A. That is correct.

Q. Now, I notice, taking the first sheet of Exhibit Z, for identification, that after the formal heading appears the word "California." Is this top sheet supposed to depict the California situation?

A. Yes, sir.

Q. Now, directing your attention to the column, the vertical column, immediately on the right under the heading of "State Total," I will ask you what those figures are.

A. The figures listed in the column marked "State Total" refer to figures developed from the California State [fol. 1612] Board of Equalization taxable motor fuel sales figures.

Q. Well, those are the taxable motor fuel sales figures, are they not?

A. That is correct.

Q. Now, I will ask you to bear this in mind in my ques-

tions to you relative to these schedules, for the purpose of simplification, that where I refer to an industry total I am going in each case to refer to what is shown under the column "State Total." Will you bear that in mind?

A. Yes, that is correct.

Q. Now, those figures you have referred to are published, are they not, by the State Board of Equalization of California, showing the gallonage upon which the State gasoline tax is imposed?

A. That is right, in the case of California.

Q. Now, coming to the third vertical column on this top sheet of Defendants' Exhibit Z, for identification, the figure for 1931 being 65,149, I will ask you what is shown in that column.

A. Those figures are measured in thousands of gallons and refer to sales by Standard Stations, Inc.

Q. Now, what is shown in the column, the vertical column, immediately to the right of the column you have just referred to, under the heading of "Dealers"?

A. That is exactly the same figure, although it refers to [fol. 1613] dealer sales as opposed to Standard Stations.

Q. Now we come to a column under the heading "Percent of Total," and from the setup of this sheet, I take it the 4.6 per cent is the proportion which 65,149 bears to 1,401,545; is that correct?

A. Yes, sir.

Q. And that the figure 5.1 per cent is the per cent which 71,251 bears to 1,401,545?

A. Yes, sir.

Q. Now, take the second sheet of Defendants' Exhibit Z, for identification, which refers to the State of Oregon. I will ask you where the industry figures shown under the heading "State Total" were taken that are shown on that sheet.

A. These figures are similar to the California figures, but, as we have noted in the source at the bottom, are prepared by the Secretary of State, of Oregon State.

Q. And they represent the total gallonage of the state upon which a gasoline tax was paid; is that correct?

A. That is right.

Q. The arrangement of this sheet is the same as the arrangement of the California sheet, is it?

A. That is true.

Q. Now, coming to the third sheet, which bears the heading, "Washington," will you tell us where the industry [fol. 1614] figures shown under the heading "State Total" are derived from on that sheet?

A. The source for those figures is the Department of Licenses, Liquid Fuel Tax Division, State of Washington.

Q. And those are published gasoline figures showing the total gasoline upon which a tax was paid in that state for the years shown; is that correct?

A. Yes, sir, correct.

Q. And the pattern followed by that sheet with respect to Washington is the same pattern followed by the other sheets?

A. They are identical.

Q. I call your attention to the sheet that is headed, "Arizona," and ask you where the figures shown in the column headed, "State Total," the industry figures shown in the State Total on that sheet, are derived from.

A. These are published by the Motor Vehicle Division, Arizona State Highway Department.

Q. And there, again, they are the total gallonage figures upon which the tax is paid in that state annually?

A. That is right.

Q. I turn to the sheet headed "Nevada," and ask you where the figures shown under the heading "State Total" are derived from, as shown on that sheet?

A. The Nevada Tax Commission.

[fol. 1615] Q. And there, again, those figures represent the total taxable gallonage for that state for the years shown?

A. Yes, sir.

Q. I call your attention to the sheet headed "Idaho" and ask you where the industry figures under the heading "State Total" are derived from, as shown in that column on that page.

A. Our source for these figures was the Pacific Coast Petroleum Industries Committee of the API, American Petroleum Institute, in Los Angeles. They, in turn, get the figures from the tax authority in the State of Idaho. It was merely a matter of convenience; that they were more readily accessible to us.

Q. Those figures, as in the case of the other states, represent the total taxable gallonage for that state for the years shown?

A. That is right.

Q. I turn to the sheet headed "Utah," and ask you where the figures for the industry totals on that sheet under the heading "State Total" were obtained from.

A. These come from the State Tax Commission of Utah.

Q. There, again, those figures represent the total taxable gallonage for the particular years shown on that sheet?

A. Yes, sir?

[fol. 1616] Q. Now I turn to the last sheet, which is headed "Seven Western States," and ask you if that sheet is totalization of the preceding sheets in this exhibit.

A. Yes. You can say that, in fact, the first three columns were totals of the preceding sheets. The last two columns are calculations from those derived totals.

Q. And by the last two columns you are referring to the headings "Percent of Total"?

A. That is right.

Q. Now, I notice on this sheet you have figures for the year 1947 shown, whereas figures were not shown for 1947 on the earlier sheets. Is that because you have available at the present time only the total figures for 1947 and not the segregation by states?

A. No, that was derived from the state total but they were figures that we were able to get after the original tables were prepared.

Q. Now, take, for example, what I call the industry figures shown under the heading "State Total," as they appear on the California sheet, which is a part of Defendants' Exhibit Z, for identification. It is a fact, is it not, that those state totals include gallonage which does not pass through retail outlets?

A. Yes, sir.

Q. The gallonage included in those state totals which [fol. 1617] does not pass through retail outlets would be gasoline that went to industrial plants or commercial establishments, or to agriculture or to something of that kind?

A. Provided that is taxable, yes.

Q. Based upon your experience as an analyst in dealing with figures of this character, can you say that the volume of total taxable gasoline, as shown by the official figures of the state, rises and falls in the same proportion as the total of the retail sales of gasoline?

A. That is our opinion, yes.

Q. Now, I direct your attention to Defendants' Exhibit

DD, for identification, and ask you if the graphs shown on that sheet are an attempt to depict in graphic form the percentages shown on the sheets which are a part of Defendants' Exhibit Z, for identification?

A. Yes, the figures that were plotted on these graphs came from the Exhibit Z, that we were just looking at.

Q. Now, the lines that run in a more or less horizontal direction, with ups and downs on these graphs, as shown on Defendants' Exhibit DD, for identification, are those the dealer sales of Standard Oil Company in the particular state indicated?

A. Let us say that it is a relationship between those sales and the industrial total.

Q. And the industrial total. So that, to be perfectly clear [fol. 1615] now, take California, for example. By the way, what do you call in your technical parlance these horizontal lines that we have spoken of? Is there any particular name?

A. No, no particular name. Let's call that the trend line.

Q. The trend line, all right. Now, I call your attention on Defendants' Exhibit DD, for identification, to the trend line for California, which seems to start at the figure 5. That doesn't mean that Standard's dealer sales were 5 per cent of the total dealer sales, does it?

A. Oh, no, very definitely not.

Q. In other words, they were 5 per cent of what you call the industry total?

A. That is the ratio between those two, yes.

Q. Yes. But I think you have said that the industry total rises and falls in proportion with the retail sales total; is that correct?

A. That is our opinion, yes, sir.

Q. On Exhibit DD, for identification, the graph entitled "Seven Western States" is a graphic portrayal of what is shown in the last sheet of Exhibit Z, for identification; is that correct?

A. That is right. Each sheet has a square segment on the chart, the graph.

[fol. 1616] Q. Yes. Now, I notice that in connection with the graph on this Exhibit DD, for identification, there has been a prolongation of the trend line to the right of the margin of the [illegible]. Was that an addition made after this graph was completed, in order to show the 1947 picture?

A. Yes, sir. That is the same figure we were referring to on the last page.

Q. On the last page of Exhibit Z, for identification?

A. Correct.

Q. Now, I invite your attention to Defendants' Exhibit AA, for identification, and ask you if these sheets were prepared under your direction, as a part of this research that we have talked about?

A. Yes, sir.

Q. Now, directing your attention to the columns on the sheets on this page which are headed "A. P. I. Total Taxable Gallons" and which I will, in conformity with my practice with respect to the gasoline tabulations, refer to as Industrial totals. I will ask you what those figures are derived from, as they are shown in all of the sheets of this particular Exhibit AA, for identification.

A. These figures are prepared by the American Petroleum Institute's Economics Division. They are published in the A.P.I. Tax Economic Bulletin.

Q. Are they figures which are published to and are com-
[fol. 1620] monly relied upon by the oil industry?

A. Yes, definitely so.

Q. Is the pattern of these sheets, Defendants' Exhibit AA, for identification, the same pattern followed with respect to Defendants' Exhibit Z, for identification?

A. Yes, sir, the same five columns.

Q. I notice on the last page of this Exhibit AA, for identification, that the figures have been added in pen and ink under the heading "Seven Western States" for the year 1947?

A. That is true, with the exception of the column marked "A. P. I. Total Taxable Gallons." That figure is not yet available. It has not yet been published by the A. P. I. and probably will not be until February of next year.

[fol. 1621] Q. Now, I invite your attention to the page showing the graphs which has been marked Defendants' EE for identification and ask you if that was prepared under your direction?

A. Yes, sir.

Q. And is the purpose of that to illustrate in graphic form the figures which are shown in Defendants' Exhibit AA for identification?

A. Exactly the same as on the gasoline figures; yes, sir.

Q. Except that here, because of your lack of a figure for the industry total, you were not able to extend the——

A. Trend line.

Q. ——the trend line for the year 1947, is that correct?

A. That is right; yes, sir.

Q. I now invite your attention to Defendants' Exhibit BB for identification and ask you if the sheets comprising that exhibit were prepared under your direction as a part of this survey?

A. Yes, sir; they were.

Q. From what source did you obtain the figures which I have called the industry figures under the heading State Total as shown in these sheets?

A. The Rubber Manufacturers' Association, the national [fol. 1622] trade organization, prepares a figure known as the tire replacement shipments. These figures represent geographically the entire United States. We have taken those figures and attempted to divide them onto a state basis on the basis of the number of motor vehicle registrations in the given state that we have shown on the sheets here in relation to the United States total. It is an artificial figure but we are attempting to divide a United States figure on some reasonable basis to get it onto a state total.

Q. Is that an accepted practice in these economic studies?

A. We do it in our work all the time; yes, sir.

Q. Are those figures which are published by the Manufacturers' Association published to and commonly relied upon by the rubber industry?

A. Yes, sir.

Q. Is that pattern followed by these sheets which comprise Defendants' Exhibit BB for identification the same pattern which was followed in Defendants' Exhibit Z for identification?

A. Yes; they are.

Q. On the last sheet comprising this Exhibit BB for identification I see that there have been certain figures added in pen and ink for the year 1947. Were they added after the preparation of this sheet because they were not [fol. 1623] available at the time the sheet was originally prepared?

A. Yes, sir; that is right.

Q. Now, I show you the series of graphs shown on the sheet which has been marked Defendants' Exhibit FF for

identification and ask you whether those were prepared by you?

A. Yes, sir.

Q. Are they intended to depict in graphic form the figures which are shown in Defendants' Exhibit BE for identification?

A. That is right.

Q. And here I notice that on Defendants' FF for identification the trend line under the graph entitled Seven Western States has been projected beyond the margin. Was that for the purpose of showing the trend during the year 1947?

A. Yes, sir.

Q. I next invite your attention, Mr. Dern, to the sheets which have been marked Defendants' CC for identification and ask you whether those were prepared under your direction as a part of this research which you say you undertook?

A. Yes, sir; they were.

Q. From what source or sources were the industry figures in this sheet which appear under the columns entitled Total [fol. 1624] State derived?

A. The situation here is quite similar to the one we just discussed in relation to tires. We had a United States total figure which was divided on the basis of motor vehicle registrations in the same ratios as those that we were just talking about on tires. The source of the United States figures, as marked here, is the Association of American Battery Manufacturers from the period from 1933 to 1938. In the period subsequent to 1938, beginning in 1939 and through 1946 we have used Dun & Bradstreet's published data.

Q. Did you take the national totals as published by American Battery Manufacturers and Dun & Bradstreets and divide them by motor vehicle registrations by state to obtain the state figure?

A. We worked a ratio in that fashion; yes, sir.

Q. I notice from a notation on this Exhibit CC for identification that the Association of American Battery Manufacturers furnished your with your base figure for the years 1933 to 1938 and that the Dun & Bradstreet's figures were the base figures for the period 1939 to 1946. My question to you now is this: Is it true that those figures published during one period by the American Battery Manufacturers and during the second period by Dun & Bradstreet's Incor-

porated are figures which were published to and generally [fol. 1625] relied upon by the battery industry?

A. Yes, sir; that is correct.

Q. Does the pattern of this Exhibit CC in general follow the scheme and the pattern followed in Defendants' Exhibit Z for identification?

A. That is right; the same pattern.

Q. Now I show you the series of graphs which have been marked Defendants' GG for identification and ask you if you prepared that sheet?

A. Yes, sir.

Q. And was that sheet intended to depict in graphic form the figures that appear upon the sheets which are a part of CC for identification?

A. That is right; yes, sir.

Q. I notice that on Exhibit GG for identification the trend line in the graph under the heading Seven Western States has been prolonged beyond the margin of the graph. Was that for the purpose of showing the 1947 figures?

A. Yes, sir; the same as gasoline and tires.

Q. And those 1947 figures came in after the original data was assembled, did they?

A. That is right. Those are also Dun & Bradstreet's source.

Q. And those 1947 figures appear upon the last sheet of Defendants' CC for identification?

[fol. 1626] A. Yes, sir.

Q. Now I show you sheet of graphs which has been marked Defendants' HH for identification and ask you if you prepared those graphs?

A. I did.

Q. That is intended simply to be a summary sheet, is it not?

A. Yes, sir. This is a recapitulation of the four exhibits you have shown me marked DD, EE, FF, and GG.

Q. In fact the graphs shown on Exhibit HH for identification are the same graphs which are shown under the heading Seven Western States on Exhibits DD, EE, FF, and GG?

A. Yes; it is the same panel reproduced, as appears in the upper left hand corner.

Q. Yesterday Mr. Daley, a representative of the FBI, when he was on the stand called attention to an increase in sales by Standard dealers or through Standard dealers be-

tween 1936 and 1946. Do you recall that testimony? I think he said the increase was 58.8 per cent over that period. Do you recall that testimony?

A. That was in relation to Standard dealers' gasoline sales, am I correct?

Q. Yes; gasoline I am talking about.

A. That is right.

Q. I am correct, am I, in my recollection of that figure? [fol. 1627] A. That is right.

Q. 58.8 per cent?

A. Yes, sir.

Q. Taking these industry totals you have referred to, what was the increase in the industry figures of the gasoline, and by that I mean the totals in the seven western states between 1936 and 1946?

Mr. Dixon: If the court please, I assume that Government's objection No. 1 to this whole line of testimony goes straight through?

The Court: That is right.

The Witness: May I ask you again was the period 1936 to 1946?

Mr. Hall: I think I am right about that. Yes.

A. According to the figures that we have just been looking at for the seven western states as a whole our industry figure would show an increase of 64.7 per cent.

Q. It is my recollection that Mr. Daley testified that there was an increase in gasoline sales through Standard stations during the period 1936 to 1947 in the seven western states of 89.4 per cent. Does that conform to your understanding of his testimony?

A. Yes, sir; that is right.

Q. Now, what, during that period 1936 to 1947, was the increase in the industry totals for the seven western states [fol. 1628] on gasoline?

A. 87 per cent; that is 87 even.

Q. It is also my recollection that Mr. Daley in his testimony testified yesterday that between 1936 and 1946 there was an increase in lubricating oil sold through Standard's dealers amounting to 62.9 per cent. Is that correct?

A. Yes, sir; that is correct.

Q. Now, taking the same period, 1936 to 1946, what was the increase in the volume of the industry total of lubricating oil for the seven western states sold?

A. Yes. The API figures for 1936 to 1946 show an increase of 194.8 per cent.

Q. Now, you understand that in my previous questions to you with respect to Mr. Daley's testimony and with respect to gasoline and lubricating oil I have been referring to gallonage volumes or quantity figures?

A. Yes, sir; that is right.

Q. And you have been answering in that vein, have you?

A. That is right; yes, sir.

Q. It is my recollection that Mr. Daley also testified with respect to batteries for the seven western states and that he said that from 1946 to 1947 the dollar volume of Standard's sales of batteries increased 90 per cent. Am I correct in that?

[fol. 1629] A. Yes, sir.

Q. Now, let us take the unit volume of batteries with respect to 1946 and to 1947, the increase. Can you tell us what increase there was in the units sold through Standard dealers in the seven western states from 1946 to 1947?

A. Using the same figures that he did yesterday, on a unit basis only, that would be an increase of 46.5 per cent.

Q. Now, taking the same period, the increase between 1946 and 1947, and taking the seven western states, what was the increase in the units considering the industry total?

A. Our figures show 41.8 per cent increase.

Mr. Hall: I ask that there be marked as Defendants' Exhibit next in order for identification only, as one exhibit, the three sheets which are headed by the caption COMPANIES MARKETING OVER 1,000,000 TAXABLE GALLONS OF GASOLINE IN SEVEN WESTERN STATES, 1946.

The Clerk: Defendants' Exhibit II for identification.

By Mr. Hall:

Q. I show you, Mr. Dern, the sheet which has been marked Defendants' Exhibit II for identification and ask you if that sheet was prepared under your direction?

A. Yes, sir; it was.

Q. I notice that it was captioned COMPANIES MAR-
[fol. 1630] KETING OVER 1,000,000 TAXABLE GALLONS OF GASOLINE IN SEVEN WESTERN STATES, 1946. Will you tell me how you selected the companies which are shown in the first vertical column on the left?

A. This tabulation was made from the same basic state taxable sales figures as published by each of the seven western state governments, which represents by companies the amount of gasoline of a taxable nature which was sold.

Q. You selected only companies which sold more than a million gallons in a year, is that correct?

A. That is right.

Q. Were there numerous other companies that sold less amounts shown in the tax records?

A. Very definitely; yes.

Q. And the check marks under the vertical columns entitled CALIFORNIA, WASHINGTON, OREGON, ARIZONA, NEVADA, IDAHO, UTAH indicate that the company opposite which the check appears was paying a tax in the state indicated?

A. That is right; it appears on those state reports.

Mr. Hall: Defendants now offer into evidence Exhibits Z, AA, BB, CC, DD, EE, FF, GG, HH, and II heretofore marked for identification.

Mr. Dixon: Before your Honor rules on that, the Government objects on the grounds that they are irrelevant and immaterial, and as to Government's objection No. 1, would [fol. 1631] like to take the witness on voir dire on some of these exhibits.

The Court: As to which part of your motion? Not on the irrelevancy?

Mr. Dixon: Well, Exhibit Z specifically.

The Court: Let me see which is Z. I will not allow examination at the present time. I think as to these figures cross-examination is sufficient to bring out all the Government may desire, and the witness has sufficiently testified as to the sources of the information and the manner in which the computations were made, and that is sufficient for the direct examination. The objection is overruled.

The Clerk: Defendants' Exhibits Z, AA through II, inclusive, are admitted into evidence.

Mr. Hall: Take the witness.

Cross-examination.

By Mr. Dixon:

Q. Directing your attention to Exhibit Z, I will ask you to refer to the portion thereof which relates to purported compilation showing the retail sales of taxable motor fuel

gasoline in the State of Oregon for the years 1931 through 1946, inclusive. I direct your attention to the figure under the heading STATE TOTAL FOR THE YEAR 1946 the amount of 376,288,000 gallons, and ask you whether that figure includes only gallonage of gasoline sold and taxed [fol. 1632] at retail outlets in the State of Oregon?

A. Did I hear in the first part of your question reference to the state total retail gallonage?

Q. Yes.

A. No, sir; it does not. That——

Q. Will you kindly explain to the court, then, what the figure 376,288 that we have just referred to actually represents in gallonage?

A. That represents the total taxable gasoline sales as made by all companies reporting to the state for the period shown. It includes the tax paid on retail gallonage, as well as the tax paid on certain commercial, agricultural and industrial sales of a taxable nature.

Q. It includes also distillates, does it not, of gasoline?

A. Yes.

Q. Upon which tax is paid?

A. There is a small amount there; yes.

Q. It also includes butane on which tax is paid, does it not?

A. I am not exactly certain without reference to my notes on the specific state. It is a minor amount, if it is included.

Q. Have you made any survey or study of the amount of gasoline that is included as distillate and butane in these [fol. 1633] figures?

A. We have attempted to make estimates on prior occasions; yes, sir.

Q. All right. Have you made any study of the amount of such distillate and butane, for example, that would be sold in the State of Oregon and is taxable?

A. We have made estimates; yes.

Q. Well, I am asking you, Mr. Dern, whether you made a study to determine that, and then we will talk about an estimate afterwards. Did you ever make any study to determine what the actual amount of distillate and butane was in the State of Oregon?

A. Well, let us say, not specifically a study, but in conjunction with other work we have looked at that.

Q. What about the inclusion of propane in these figures for the year 1946 in the State of Oregon?

A. That is similar to butane, LPG, liquified petroleum gas.

Q. Did you make any study to determine how much of the fuel taxed in the State of Oregon was sold in the State of Oregon during, say, the year 1946, or in any of these other years that are referred to in Exhibit Z?

A. I think the same answer would apply as in regards to butane.

Q. And is diesel fuel included also in those figures, taxable gallonage to the State of Oregon?

[fol. 1634]

A. No, sir; they are not.

Q. Is there any fuel oil included in the figures of state totals for the State of Oregon for the year 1946 that you have referred to?

A. No year.

Q. For no year. That is, that is diesel fuel oil on which a state tax is paid?

A. This refers to tax on gasoline or highway use of the gasoline bracket, let us say. Diesel fuel is not included and fuel oil is not included.

Q. So that it is possible, then, that these other types of fuel that I have mentioned other than gasoline, namely, distillate butane and propane, are included in the figures mentioned for 1946?

[fol. 1635]

A. Yes, that is possible.

Q. Now, with reference to the figure for 1940 on Exhibit Z for the State of Oregon, do you know whether in the State of Oregon was included the taxable gallonage of distillate butane and propane sold in the State of Oregon?

A. I cannot say categorically. I could investigate and ascertain.

Q. What about diesel and fuel oil gallonage for the year 1940 as contained in these figures for the State of Oregon in Exhibit Z?

A. What is your question in relation to diesel and fuel oil? Are they included?

Q. Yes.

A. No, they are not.

Q. You say they are not included in this exhibit?

A. That is right.

Q. That is for the year 1940. Now, you say you did

make a study to determine what amounts of distillate butane and propane were sold in the State of Oregon?

A. Well, let's put it this way. We are familiar with our own figures. We have no reason to believe that the industry [fol. 1636] as a whole differs from ours.

Q. In other words, you judge the rest of the industry, what they sell, by your own figures?

A. For lack of anything better, yes.

Q. In other words, you don't know what they sell, but you assume they sell the same amount of those items as Standard sells. Is that your answer?

A. That is our opinion.

Q. And you base these compilations on that information. I mean, these other documents that you have prepared and which have been offered in evidence, on that assumption?

Mr. Hall: Wait a minute. I would like to have that question read.

(The question was read.)

The Witness: That isn't very clear to me.

By Mr. Dixon:

Q. Well, I will withdraw the question, then, Mr. Dern. It is a fact, then, that on the items I have mentioned, you do assume in some of your compilations that the figures of the sales of other companies selling the same products are the same as those of Standard's; is that correct?

A. In reference to these small minor products you are referring to, butane, propane, and so on.

Q. That is right. Did you answer the question?

A. Yes, sir, I did.

[fol. 1637] Q. And does that mean these state figures, for instance, take the State of Oregon, where you have represented the sales of Standard Stations, Inc. are 3.5 per cent of the total sales, and the sales of dealers are 9 per cent of the total sales?

Mr. Hall: Just a moment. I would like to have that question read.

(The question was read.)

Mr. Hall: Now, that is just contrary to the evidence.

Mr. Dixon: Just a moment.

Mr. Hall: May I present my objection, sir, before you argue?

Mr. Dixon: Certainly. Proceed.

Mr. Hall: I am objecting to that on the ground that assumes a fact exactly contrary to what the witness has stated. These were not prepared to show per cent of available. They were prepared to show a trend, and in his question counsel is assuming that the witness has said what he calls the industry total is a retail sales total.

The Court: That is permissible as a part of the cross-examination. He doesn't have to accept the witness' explanation. He may interpret the figures differently and the witness, realizing the import of the question, can give his own interpretation or accept it. I will overrule the objection.

[fol. 1638] The Witness: May I have the question again, please?

Mr. Dixon: Certainly. Will you read it, please?

(The question was read.)

By Mr. Dixon:

Q. I am referring there, Mr. Dorn, to Exhibit Z.

A. I am with you there on that, yes. No, very definitely, what we are trying to show here is a trend through the period we have depicted. We are not attempting to magnify any one individual year, but we want to get the overall picture through the year, to show the trend in relationship to a state total or an industry total figure.

Q. Well, if there was an error in any one of the years which you have submitted these figures for, would that affect your trend, as you call it, for that state?

A. Yes, sir, it would affect the figure that was plotted on the graphs, that is true.

Q. If you had included in the figures for, say, the year 1940 products other than those that were sold at the retail outlets in your state total that would throw off your percentage of the total sales of Standard to the total sales of Standard Stations, Inc. and the Chevron or dealer outlets for that year, wouldn't it?

A. I am afraid I haven't made myself clear as to just what is included in that industry figure.

Q. Well, I don't want to go over that again. I think [fol. 1639] you have answered what was in it.

The Court: If he cannot answer the question in the form in which it was put, I will ask counsel to reframe it.

Mr. Dixon: Do you understand my question?

The Court: If you do, you may answer it, and if you want to give any explanation, you may give it.

By Mr. Dixon:

Q. Do you understand my question, Mr. Dern?

A. I would like to have it reread.

Q. Will you read the question, please?

(The question was read.)

Q. Is my question clear, Mr. Dern?

A. It is rather involved.

Q. Well, statistics is rather involved, too, isn't it, at times?

A. I want to be sure that we are not referring to a relationship, on the one hand, of Standard dealer sales and total dealer sales for the State of Oregon on the other side. We are not making that comparison. We are comparing the total dealer sales and a total figure for the industry, which includes dealer sales. It also includes other taxable sales.

The Court: What other sales do you include other than dealer sales? You mean made by the company direct to individual companies, or what?

[fol. 1640] The Witness: That is possible. For example, a sale made to agricultural outlets, farmers, or industrial sales, which are taxable. The company must report those as a taxable sale.

The Court: I see.

The Witness: But they also include the retail sales.

The Court: I see. In other words, you include the direct sales which are not through dealers?

The Witness: That is right.

The Court: I see. I think that introduces a new element.

Mr. Dixon: That is right, your Honor. I think perhaps your Honor's question would have been much better than counsel's, to bring out the point.

The Court: Well, I will give you credit for it. You have been on the bench, too. I don't know whether you were on a trial bench. But all I am interested in is to try to clarify the situation, if I can help.

Mr. Dixon: I think it has helped very much, your Honor. I think that is all.

The Court: Any redirect, Mr. Hall?

Mr. Hall: Yes.

Mr. Dixon: Your Honor——

Mr. Hall: I want to make this perfectly clear. I thought [fol. 1641] I had on direct examination.

The Court: Just a moment. I think Mr. Dixon was going to say something. He started to say something.

Mr. Hall: I am sorry.

The Court: He started to say something, but you had your back turned.

Mr. Hall: I am sorry. I thought he was done.

The Court: That is permissible. I might say I noticed a picture in the newspaper the other day which showed that you can turn your back even on the Emperor of Japan at the present time, where you couldn't formerly and you had to retreat facing him. But you are not a good sounding board, and he spoke just as you were passing in front of him.

Mr. Dixon: I wanted to offer in evidence at this time a certain report, but perhaps it is out of order and we can put it in as a part of the government's case in rebuttal.

The Court: Is it in connection with what this witness has brought out?

Mr. Dixon: Yes.

The Court: Then I think you can do it now. Does counsel know what you are referring to?

Mr. Dixon: I will show it to him. We ask that the report for the State of Oregon showing the gallonage of gasoline sold in that state for the years 1930, 1935, 1940, through 1946, inclusive, be marked for identification.

[fol. 1642] The Clerk: Government's Exhibit 104, marked for identification.

Mr. Hall: Shall I proceed with my examination?

Mr. Dixon: I just want to offer that in evidence.

Mr. Hall: Oh, you want to offer it in evidence?

Mr. Dixon: Yes.

The Court: Any objection?

Mr. Hall: No objection.

The Court: It may be received.

The Clerk: 104 in evidence.

Redirect examination.

By Mr. Hall:

Q. Now, Mr. Dern, referring to this column "State total" in Exhibit Z, it is a fact, is it not, that the figures in that state total include quantities that do not pass through service stations at all?

A. Very definitely, yes, sir.

Q. But it is also true, is it not, that the quantities shown in that column rise and fall in the same proportion as total quantities passing through dealer stations?

A. That is our opinion, yes, sir.

Mr. Hall: That is all.

The Court. All right. Unless your next witness is a short witness, I will take a recess.

Mr. Hall: I would be very grateful, your Honor.

The Court: We will take a short recess now.

(Short recess.)

[fol. 1643] Mr. Mathews: Mr. Mortensen.

HJALMAR MORTENSEN, called as a witness by the defendants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Hjalmar, H-j-a-l-m-a-r Mortensen, M-o-r-t-e-n-s-e-n.

Direct examination.

By Mr. Mathews:

Q. By whom are you employed, Mr. Mortensen?

A. Standard Oil Company of California.

Q. What position do you occupy with that company?

A. Dealer merchandiser.

Q. What is the locality of your work? What area do you cover?

A. I cover three different areas: Reno, Carson City, Susanville territories.

Q. What is the nature of your duties as a dealer merchandiser?

A. Primarily to train service station personnel to efficiently serve the public.

Q. And in doing that what steps do you take?

A. Well, when I visit a dealer I usually get into a pair of coveralls or suntans, get right in and work with the dealers. First, by making an analysis of the station as to the physical [fol. 1644] appearance of the station; and secondly, their operation in handling the customers coming into their place of business.

Q. Mr. Mortensen, I show you Government's Exhibit No. 87. Will you look at this? You will note there is a Standard Oil Chevron service station referred to in that file.

A. Yes.

Q. Are you familiar with that station?

A. Yes; I am.

Q. By whom was this station operated during the year 1946?

A. Orville Musser.

Q. Did you ever visit the station while Mr. Musser was operating it?

A. Yes.

Q. During what periods of time?

A. Usually about every four weeks I would call at his station.

Q. When would you say that commenced?

A. A little over two years ago.

Q. A little over two years ago?

A. Yes.

Q. That is, that would make it about May or June of '45-'46?

[fol. 1645] A. In about May of '46; yes.

Q. What did you do when you visited his station?

A. Well, as I previously said, I made an analysis of the station. I got into some work clothes and worked with Mr. Musser, and I found that he was not operating as efficiently as he could for his best interests. So I made several suggestions as to how he could improve his position with the customers calling at his station, by working with him on the pump block, suggesting correct procedures in the lubrication room to correctly lubricate the cars that came in for service, and also suggested a follow-up system whereby he could have a record of the cars he had lubri-

cated and send out follow-up notices for return work of lubrication jobs, bookkeeping systems, and so forth.

Q. What condition did you find at his station with respect to cleanliness?

A. Not very good. It was quite dirty, in fact, generally.

Q. Did you make any suggestions about that?

A. Yes. As a matter of fact I helped him clean the place up. The lube floor was oily, it was cluttered up with empty oil cans, oily rags. The station proper was very untidy, the windows were dirty, stock was not placed on the shelves, and just helter-skelter like. The rest rooms were far from clean.

[fol. 1646] Q. Did you as you continued to visit find that there was improvement?

A. Very little. Periodically, he would—well, he would say, "Yes; I am going to really get after this now," but on my next visit I found practically the same condition to exist.

Q. Did you find that Mr. Musser spent a great deal of time in his station?

A. Not as much time as I felt he should for proper operation of the station.

Q. What did he do with it when he was not there?

A. Well, he had an extra man hired, most of the time quite an old gentleman, to take care of the business when he was not there.

Q. Was the station properly run when he was not there?

A. No.

Q. Did you as you continued your visits to Mr. Musser's station come to any conclusion as to his ability to operate a service station?

A. Yes; I did. For the simple reason, after I had worked with him for, oh, over a year or better than that, a year and a half, I couldn't help but conclude that my efforts had practically been in vain as far as suggesting proper operation, keeping his station clean, and so forth.

Q. What did you do when you came to this conclusion?

[fol. 1647] A. Suggested or recommended to Mr. Hodge, whom I am accountable to when I work in his district, that unless there was a decided improvement soon that we would secure a new operator for the station.

Q. What was the outcome of that recommendation, Mr. Mortensen?

A. Mr. Hodge investigated for himself, and finally the outcome was that we did secure a new operator for the station.

Q. Did you ever object to his having accessories other than those purchased from the Standard Oil Company?

A. No.

Q. Did you ever discuss accessories with him on your visits to his station?

A. Yes; I discussed accessories with him.

Q. What did you say to him?

A. Well, for instance, from time to time I would find several competitive items he had in his station and I would ask——

Mr. Dixon: May I ask that we have specified the time, your Honor? I object on the ground no foundation laid.

The Court: Well, it is all right to give them a general designation without stating what they were.

The Witness: What items?

The Court: Yes.

[fol. 1648] The Witness: Well, there was items of, for instance, auto polishes and flashlights, flashlight cells, and auto fuses. Those were just some of the things that I call to mind right away.

The Court: All right. Now, go ahead and tell us what you did. They were not of a brand that you handled?

The Witness: That is right.

The Court: Do you remember what brand they were?

The Witness: No; I don't.

The Court: You said they were not your goods?

The Witness: Yes; that is right.

The Court: What did you tell him?

The Witness: I pointed out to him that it would be to his advantage to handle our merchandise, for the simple reason that customers coming into Chevron stations were accustomed, as a rule, to find merchandise in the stations that we handled; and also, that the merchandise that we sold to the dealers, the customers coming into his station, trading, could put them on their credit card, whereon the competitive items he could not.

By Mr. Mathews:

Q. Did you suggest anything to him regarding the profit that might accrue to him from handling your line?

A. Yes.

Q. What did you suggest in that respect?

[fol. 1649] A. I pointed out the quality of our product was nearly in every respect superior to competitive products that I have just mentioned, and it would be more profitable to him to handle our merchandise.

[fol. 1650] Q. Did you ever, and I am reading now from page 886 of the transcript, tell him you didn't wish to have any more competitive accessories handled in that station?

A. No, sir.

Q. Did you ever, and I am reading now from page 896 of the transcript, tell him that it looked a little bad, having competitive merchandise?

A. No.

Q. Did you give him any instructions, reading again from page 896, just to purchase Atlas brand products?

A. No.

Q. Referring again to a time before you recommended that thought be given to negotiating the termination of his dealership, did you ever have any complaints?

A. Yes, we had several customer complaints on the station.

Q. Now, will you tell us a little more fully what you mean by "customer complaints"?

A. Well, a customer would come into the station, for instance, and he wouldn't even offer windshield service to the customer.

Mr. Dixon: I object to the question, your Honor, on the ground no foundation has been laid, and it is too general.

The Court: Well, I don't know. What he told him is what we are concerned with, not what the customers told [fol. 1651] him. Overruled.

You are telling us what you told him; isn't that true?

Mr. Dixon: Not as I understand it, your Honor.

The Witness: No, as I understood the question, I was to answer as to what the nature of the complaints, if any, were from customers coming into his station.

The Court: Were you there when the customers made complaints?

The Witness: No, but I was in the station several times when I was just observing as to how he would handle a customer when he came into his station, and very often I

would see a customer put air in his own tires, rather than that he should offer that service to the customer, which had been suggested to him to do, to properly serve the public.

The Court: Well, in what city was this?

The Witness: Portola.

The Court: In California, or Nevada?

The Witness: Portola, California.

The Court: That is a small community, isn't it?

The witness: It is a community of about 4,000, your Honor.

The Court: What county is it in?

The Witness: Plumas County, I believe.

The Court: Oh, yes, I remember now.

The Witness: I am quite sure it is.

[fol. 1652] The Court: Go ahead. Or, let me ask you this question: Did the man ask for it, and did he refuse?

The Witness: No. It was just a matter that we suggest to our dealers, in order to properly serve the public, that when a car pulls into his station that we offer a car these free services, such as——

The Court: Yes, I know. The only point I am making, isn't it a fact that sometimes in these neighborhood cities and in small communities men who know the station agent so well will just volunteer to do some of the work, and they will just start while he is putting the gas in, to put air in the tires. That is a part of the small town spirit, isn't it?

The Witness: That is very true. However, the complaints that were called to my attention, your Honor, was from people coming to us, not residents of Portola.

The Court: Did you repeat that to him?

The Witness: Yes.

The Court: You told him?

The Witness: Yes, I told him of the customer complaints.

Mr. Dixon: If the court please, the objection is also directed to the fact, as your Honor previously stated, that service is not involved.

The Court: But this is impeaching testimony.

[fol. 1653] Mr. Dixon: I see. For that purpose only?

The Court: Yes. Mr. Mortensen is being called to impeach the testimony of your witness and that is why these categorical questions are being asked. In other words, he is giving a different reason which may have led to the

severance of the relationship between Standard and the particular station.

Mr. Dixon: I quite agree, your Honor, and that was brought out on cross examination, and I have no objection to it if your Honor is interested in it.

The Court: He is not bound by the answers received on cross examination, and he can contradict the man, if he wants to, and that is what he is attempting to do. Proceed.

By Mr. Mathews:

Q. Directing your attention again to the statements made by Mr. Musser that I read to you out of the transcript, you told me that you didn't say any of those things?

A. That is right.

Q. Did you ever say any of those things in substance, in any other words?

A. No.

Mr. Mathews: That is all.

The Court: Cross-examine.

[fol. 1654] Cross-examination.

By Mr. Dixon:

Q. I will hand you what is marked Government's Exhibit 87, and ask you to examine that and state whether in any of the documents attached thereto you find any provision in the lease or agreement with Mr. Musser, which requires him to do any of the things that you said he did not do when you were in his station.

Mr. Mathews: Your Honor, I object to that. The documents speak for themselves.

The Court: I think the question really goes as to the person's knowledge. I think he testified on direct examination that he knew what those documents were. I think I will allow it. In effect, I take it, the question merely means if he knew of any specific requirement in the agreement that related to the particular topic. Overruled.

Mr. Mathews: Do you understand the question?

The Witness: Yes, I think I do.

The Court: Go ahead. You may answer.

The Witness: I was looking for a TBA agreement here, but I don't see one.

The Court: A TBA agreement?

The Witness: Is that what you have in mind?

The Court: It is at the end there, isn't it?

The Witness: I don't think it is there.

[fol. 1655] Mr. Mathews: No.

The Witness: I see nothing here other than the gasoline agreement, where the dealer agrees to buy his gasoline requirements from the Standard Oil Company.

By Mr. Dixon:

Q. There is nothing in the agreement, then, that you know of, requiring Mr. Musser to take any instructions or orders from any Standard Oil official concerning the manner in which he shall keep his station, whether it is clean or not, or as to the hours in which he will operate it; is that correct?

A. Not to my knowledge, no.

Q. So that you just came in and made those suggestions to Mr. Musser?

A. I tried to help the man, yes.

Q. Did you finally recommend that because he didn't do those things that you mentioned that he be canceled as a Chevron dealer?

A. There were—yes, and by that I mean there were more reasons than that. His personal appearance, for one thing.

Q. You didn't like his personal appearance?

A. Not because I didn't like him. He would appear at the station in the morning ready for work unshaven, with a couple of days' growth of whiskers on his face.

Q. Just when were you there and made that observation?

[fol. 1656] A. I couldn't give you any specific date as to it, but generally that was the appearance I found him in, with his clothes dirty and wearing a pair of old sloppy overalls.

Q. Did Standard furnish him with any uniform to operate his station?

A. No, sir.

Q. As a matter of fact, he is supposed to be an independent business man under this contract, is he not?

A. That is right.

Q. And to operate his own business?

A. Yes.

Mr. Dixon: That is all.
The Court: Had you finished?
Mr. Mathews: That is all.
The Court: Step down.
Mr. Mathews: Mr. Hodge.

ARTHUR HODGE, called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: Take the stand, please, sir. What is your name, please?
The Witness: Arthur Hodge.
The Clerk: And the spelling of your last name, please?
The Witness: H-o-d-g-e.

[fol. 1657] Direct examination.

By Mr. Mathews:

Q. Mr. Hodge, by whom are you employed?
A. Standard Oil Company of California.
Q. What is your position with that company?
A. Branch manager at Reno, Nevada.
Q. Is there included within the territory of your branch the community of Portola, referred to in this Exhibit 87, which I hand you?
A. Yes, sir.
Q. Are you acquainted with the service station referred to in this exhibit?
A. I am.
Q. Did you ever visit that station?
A. I have.
Q. Upon what occasion?
A. Well, whenever I was in Portola I used to drop in on all the dealers and called on them, and that was on the average of, oh, two or three months apart.
Q. Did you make any of these visits while Mr. Musser was there?
A. Yes, sir.
Q. What did you observe with respect to the operation of his station upon those occasions?
A. Well, as a rule, it was very untidy and dirty, and

[fol. 1658] usually the attendants were not up to what I would consider a good service station operator.

Q. Now, did Mr. Mortensen make a recommendation to you that consideration be given to negotiating a termination of his dealership?

A. We discussed that several times with Mr. Mortensen in our office, and he finally came to me and wanted to ask if he could secure a termination on the lease of that service station with Mr. Musser. As Mr. Musser was a party that we secured to operate that station during the war, and it was rather hard to keep operators going then because they could make more money in other industries than they could in service stations, I was rather reluctant to tell him it was O. K. to try to secure another operator or to cancel the agreement. So I personally made a trip up there to see the type of operation, the type of service given to the public, and after my trip I instructed Mr. Mortensen it was O. K. to go ahead and secure a mutual termination.

Q. As to the negotiating of a termination of a dealership, does that happen very often——

A. Not very often.

Q. —in your branch?

A. No, sir.

Mr. Dixon: Objected to as wholly irrelevant.

The Court: It may go to the reason why he remembers [fol. 1659] so accurately. How many dealers have you under your supervision?

The Witness: A total of about 75.

Mr. Mathews: Do you want the question read?

The Court: I think he answered it. He had answered it before I asked him a question. Read it, please.

(The record was read.)

By Mr. Mathews:

Q. Did the question of terminating this dealer's relationship with the company come up on some previous occasions?

A. On some previous occasions?

Q. Yes.

A. Yes, we had discussed it several times but, as I said before, that we are rather reluctant to cancel any dealer's

agreement, and especially one that we had secured during the war, during the time it was hard to secure operators.

Q. Did the owner of the property ever suggest that he be terminated as a dealer?

A. Well, about——

Mr. Dixon: I object to that question, your Honor. It is wholly irrelevant.

The Court: Read the question, please.

(The question was read.)

The Court: I will sustain the objection. We are not [fol. 1660] interested in the friendliness or unfriendliness of the relationship. This is merely impeaching testimony of a particular situation. You have a right to show whether you laid a foundation on cross-examination or not that the termination was not traceable to a dissatisfaction with his handling of the products. It is admitted by Mr. Mortensen that he was handling products, but your relationship or the relationship of this witness to other dealers is not involved here.

Mr. Mathews: Your Honor, the only reason I asked that question, and I agree it is not too important, but the government counsel, when Mr. Musser was here, asked if the landlord didn't object when he ceased being a dealer.

The Court: That isn't the question. That doesn't relate to it. I remember Mr. Musser very well because while he was testifying I remember I got mixed up on my geography of California after all these years. I thought he was in Monterey County, and he said that it was in Plumas County. But I don't think this last question related to Musser.

Mr. Mathews: I meant to relate it to Musser. If I didn't make it so, your Honor, it was an error on my part.

The Court: Well, if it relates to him, you can answer.

The Witness: Yes, sir.

The Court: Did he ask to be relieved?

Mr. Dixon: May I have the question again, if the court [fol. 1661] please? May I have it read?

The Court: I have just altered it or asked a substitute question. Now, are you going to give us trouble on it? I wanted to modify it. Now you want to go back to it again. The witness may answer.

The Witness: Well, some six or eight months before

Mr. Musser left the service station, the owner of the property, Jack Schill, wrote a letter to the Sacramento office asking that a former operator that had been in there before the war and had left the service station to go into war activity be put back in the service station, and the letter was referred to me at Reno; and I happened to be at Truckee and in a service station when Mr. Schill drove in to buy some gasoline.

Mr. Dixon: If the court please, I object to all of this. I think, in the first place, it is not responsive to the question. As I recall the record, and it is wholly a minor point, and if your Honor is interested in it, why, I will withdraw my objection.

The Court: The only thing is, did he communicate this fact to Musser?

The Witness: Yes, sir.

The Court: All right. Give us the narrative. Give us what you told him.

The Witness: Oh, I am talking about—I was talking [fol. 1662] about the owner of the property, and I tried to point out to him that I wasn't in favor of putting Mr. Musser out due to the fact that he had served a very good purpose when it would have been impossible to find a good operator to go in that service station, so I thought, in justice to Mr. Musser, he should be left in there a while to see if he could improve his operation. But Mr. Schill was working on a rental plus a gallonage rental, and he was interested in the money he could get out of the service station with more gallons.

The Court: To whom did you tell that,—Mr. Mortensen?

The Witness: I told that to Mr. Schill.

The Court: Schill was the owner. Well, I will allow it to stand. The only object was to show that they were tolerant towards him.

Mr. Dixon: If the court please, I should not stress the point, except I do want to point out, your Honor, that in the record at page 899 the government did offer or attempt to open up this subject of a discussion with the landlord concerning complaints, and so forth, and Mr. Hall moved to strike the answer, and the court granted it, and that was the extent of it.

The Court: This is not in relation to the complaint. This

merely shows, and, as a matter of fact, it would be permissible to ask this witness to state his motive or lack of [fol. 1663] motive. This merely shows that instead of being anxious to get rid of him, why, they felt because he had filled in during the emergency, the war emergency, that he should not be replaced. In other words, they were following the song, "I Am So Used To You Now," and they were so used to him that they were being tolerant with him.

Mr. Dixon: I realize, your Honor, that this is a court of equity, and if you are interested in his testimony, I have no objection, even if it is wholly irrelevant.

The Court: It is a minor thing.

Mr. Dixon: That is right.

The Court: And it shows the attitude of the representatives according to their theory, that they were not trying to get him out.

All right, proceed.

By Mr. Mathews:

Q. Mr. Hodge, I am reading now from page 886 of the record, and I will ask you, did you ever tell Mr. Musser that you didn't wish to have any more competitive accessories handled in that station?

A. No, sir.

Q. Did you ever say that in substance?

A. No, sir. The only thing I could add, there is that a branch manager or anybody that is a salesman for the company, well, we are always trying to sell our own merchandise rather than the competitors'.

[fol. 1664] The Court: In other words, you didn't use those words, but you tried to use your influence.

By Mr. Mathews:

Q. Mr. Musser testified that upon one occasion there was a discussion regarding a fan belt, and he stated, reading from page 896, that you told him that it looked a little bad, having competitive merchandise. Did you ever say that to him?

A. No, sir.

Q. Did you ever say that in substance?

A. No, sir.

Q. From the same page, he said that you instructed him

just to purchase Atlas brand products. Did you ever tell him anything like that?

A. No, sir. Again, it is merely a case that we wanted to sell Atlas merchandise, that we certainly wouldn't try to sell the competitors' merchandise.

Mr. Dixon: Will you read that answer, please?

(The answer was read.)

By Mr. Mathews:

Q. Now, in trying to sell your merchandise, what approach did you take?

A. Well, we tried to point out the fact that our merchandise is as cheap as the competitor's, or better, and, also, we have as complete a line as is needed in the service station; and, also, that usually with the competitor they have to pay the freight or express on any merchandise they buy [fol. 1665] from them, where we lay the merchandise to their door at our cost, which usually brings the merchandise, the Atlas line, cheaper than the competitive line.

Mr. Mathews: That is all.

Cross-examination.

By Mr. Dixon:

Q. You say you laid the merchandise down at cost to Standard Oil?

A. Yes, sir.

Q. So that Standard Oil Company does not make any money on the tires, tubes, batteries and accessories you sell to the dealer outlets?

A. Our price to the dealer is to his door rather than from our warehouse.

Q. Then what do you mean when you say you laid down the merchandise to the dealer at your cost?

A. We paid the freight from our warehouse.

Q. You don't mean to say that you sell any of this merchandise, this tires, tubes, batteries and accessories to the dealer at the cost to the Standard Oil Company, do you?

A. Well, that is an expression that is used by salesmen, and I think that the merchandise is laid down to their door at the company's cost; in other words, paying the freight

from our warehouse, or the express, to their place of business, which is not a policy in all accessory houses.

[fol. 1666] Q. In other words, it is a fact, is it not, that the Standard Oil Company makes a profit on the tires, tubes and batteries, and accessories that it sells and turns over to the dealers at what you call cost?

A. I imagine we do. I don't know what the profit is.

The Court: I think the witness explained clearly what he meant, that he puts it down net at the invoice price, without any freight addition; is that it?

The Witness: That is correct, your Honor.

By Mr. Dixon:

Q. And if it should be a fact that the dealer could purchase competitive merchandise with Atlas at a lower cost, as you have used the term, would that be satisfactory to the Standard Oil Company?

A. That is a case of salesmanship, to sell him out of.

Q. And that would include tire, tubes and batteries, would it?

A. That would be accessories that we are talking about.

Q. You say just accessories?

A. Yes, sir.

Q. But as to tires, tubes and batteries, the independent dealer operating the station is required to buy all of those from Standard, is he not?

A. Yes, sir, I imagine so. That's right.

Q. And he is not supposed to, under his contract with Standard, handle any other brands of tires, tubes and [fol. 1667] batteries, except those furnished him by the Standard Oil Company?

Q. Well, there is very few that haven't handled some competitive brands.

Mr. Dixon: Will you read my question, please?

(The question was read.)

Mr. Mathews: Just a minute. Your Honor, I believe he is calling for an interpretation of the contract.

The Court: This is cross-examination. This man is a district manager, in charge of others, and it is permissible to ask him, not as to an interpretation of the contract, but as to the practice which flows from the contract. He cer-

tainly knows what it is and he has given a forthright answer to the previous question.

Mr. Dixon: Maybe he has already answered my question, your Honor.

The Court: He has answered. It is repetitious.

Mr. Dixon: I don't care to be repetitious.

The Court: He just said that they weren't supposed to, but that they do. Isn't that what you meant to say?

The Witness: That is correct, your Honor.

By Mr. Dixon:

Q. It is a fact, is it not, that Mr. Musser was selling some of those products that he wasn't, as you put it, supposed to sell at his station?

A. I wouldn't say tires, and batteries, and tubes,——

[fol. 1668] Q. Yes.

A. But he had the right to sell competitive accessory lines, and it was our job to unsell him on the competitive line.

Q. In other words, he wasn't handling, so far as you know, any other competitive tires, tubes and batteries?

A. That is correct.

Q. But he was handling accessories that were competitive to those which Atlas or the Standard Oil Company felt should be handled by the Chevron dealers at those stations which had this agreement?

A. Well, that is the line of merchandise we were supposed to try to sell to all of our dealers.

Q. Now, this station is in rather a windy part of California, isn't it? Or, do you know?

A. Well, I have been there in very nice weather and windy weather and rainy weather, and snowy weather.

Q. It has all kinds of weather?

A. That is correct.

Q. Is it dusty, or is it clean around there, do you know? I mean the roads and the general territory.

A. Well, this station is on a paved highway, if that is what you mean. This is on the Feather River Canyon Highway.

Q. Is everything paved, or are there any open fields [fol. 1669] there?

A. No open fields. There is a restaurant next door, and

a service station on the other side of it, and a grocery store and service station across the street.

The Court: It isn't one of those isolated stations out in the country?

The Witness: No, sir.

The Court: There is a little settlement around there?

The Witness: That is right.

The Court: And, furthermore, you were not complaining about anything the wind might be blowing into the station, because the wind wouldn't be blowing empty oil cans into his lubricating shed? Is that what you mean?

The Witness: That is correct.

By Mr. Dixon:

Q. By the way, Mr. Musser wasn't receiving any salary, was he, from the Standard Oil Company or Standard Stations, Inc.?

A. No, sir.

Q. You don't want the court to believe, do you, that he was under any obligation to take orders from you with reference to anything that he did at the station?

A. We never gave him orders.

Q. I understood that you told him about his station being unfidy and dirty.

A. Well, we could still tell him that without giving him [fol. 1670] orders on it.

Q. And you felt that because you told him it was that way, that he should correct it, or you felt he was wrong about the station itself; is that correct?

A. I don't get the question.

Q. Read the question, please.

(The question was read.)

Q. Do you understand my question?

A. He was to serve the public.

Q. No, do you understand my question?

The Court: Let him answer in his own way.

The Witness: To serve the public correctly we felt, or I felt, and after conference with Mr. Mortensen, that he could improve the operation of that station, yes.

[fol. 1671] The Court: Just be frank about it. You made the suggestions with the idea he would follow them?

The Witness: That is correct, your Honor.

The Court: Which was to his interest and to your interest?

The Witness: To the company's interest.

The Court: To the company's interest. By "you," I mean representing the company.

The Witness: That is right.

The Court: All right.

By Mr. Dixon:

Q. Mr. Musser was supposed to be an independent business man under this arrangement, wasn't he?

A. He had a service station lease and we had the lease from the property owner.

Q. I say, he was supposed to be an independent business man, wasn't he?

The Court: I think that is already answered. You had an interest in the deal. To use the war time expression, you owned the prime lease?

The Witness: That is right.

The Court: You were the lessee.

The Witness: And we were anxious to sell all the merchandise we could.

The Court: That is right. That is the profit you derive.

By Mr. Dixon:

Q. He was paying you the rental that he was supposed [fol. 1672] to pay for the station, wasn't he?

A. He paid the rental on a gallonage basis.

The Court: I am going to pull some of your allegations of your complaint against you pretty soon if you do not desist from this sort of examination.

Mr. Dixon: All right, your Honor.

The Court: Because you argue in your complaint——

Mr. Dixon: Very well, your Honor. No further questions.

The Court: —or don't approve of the importance of having stations at certain places. I will grant that there is an advantage accruing to the company to have outlets in certain areas. That is disclosed from the very nature of their business, and if they do, they want to observe certain minimum standards.

Mr. Dixon: No further questions.

Mr. Mathews: That is all.

The Court: All right.
Mr. Mathews: Mr. Turner.

CLESSE M. TURNER, called as a witness by the defendants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: I will have to spell it for you. C-l-e-s-s-e M. Turner.
The Court: That must be a family name, isn't it?
[fol. 1673] The Witness: I don't know where it came from, your Honor.

Direct examination.

By Mr. Mathews:

Q. Mr. Turner, by whom are you employed?
A. Standard Oil Company of California.
Q. In what capacity?
A. Branch Manager of Las Vegas, Nevada.
Q. I hand you Government's Exhibit No. 43. Will you look at that and tell me whether you are familiar with the service station referred to there?
A. I am.
Q. Are you acquainted with the Russell Stephens mentioned in these documents?
A. I am.
Q. Where did you come to be acquainted with him?
A. Well, I was transferred to Las Vegas—I think the transfer was effective the first of March, 1947, but I was between San Francisco and Bakersfield and Los Angeles for about two weeks there, and I am not certain of just the exact effective date. But I arrived in Las Vegas either the 1st or 2nd of March and, naturally, I wanted to visit my field. I made as rapid a coverage of the field as possible, and that is the first time I met Mr. Stephens.
Q. Did you make subsequent visits to Mr. Stephens at [fol. 1674] the station?
A. Sir?
Q. Did you make subsequent visits to that station?
A. Yes. I made a visit more often than ordinary to that station. Ordinarily I would only visit a station, a service station that is, possibly every two months, but because of

the size and importance of that condition, and because of the apparent lack of training which the operator had there, I went there every two weeks for about three to three and one-half months.

Q. What situation did you observe at that station upon your visits?

A. Well, the first visit that I went there the clothing that both Mr. Stephens and—I think he had three employees on at that time in the lubrication rack and the pump block—was soiled, and I believe two of them didn't even have neckties on.

I observe the attorneys laughing down there. We would like to see operators in neckties, to where it looks like they are giving clean service. If the operator is clean it makes a better impression on the customer.

Also, the floor of the lubrication room was a concrete floor, and I am confident that it hadn't been cleaned for several weeks because it was deeply encrusted with dirt and grease, which is—if any of you gentlemen have ever gone into a [fol. 1675] dirty lubrication room and then walked into your house——

Mr. Dixon: If your Honor please, I object to any observations now.

The Court: That is all right; just state what you found.

The Witness: Well, it is an improper condition, Judge——

Mr. Dixon: I object to that, your Honor, as being a conclusion.

The Court: Well, he can state a conclusion. All right; go ahead.

By Mr. Mathews:

Q. Did you call these situations to his attention?

A. Yes; I talked to him about it. I asked him if he didn't think it would be a good idea to correct that condition. And I will say that on my next visit that it was immaculate. He had the lube room very nicely cleaned out and his men were nicely dressed and clean. But two or three weeks later he apparently had not even swept the place out since the last time that he had cleaned it up.

The Court: Maybe he had been in the army, and the army slicks up only for inspection.

The Witness: That is true.

By Mr. Mathews:

Q. Did you always find Mr. Stephens there upon your visits?

[fol. 1676] A. No, sir. I think it was that third visit there that he was not there. I asked the men where he was and they said that he had started a meat business over in the plant at Henderson and he was over at that business. So I went back the next day and he wasn't there again, and at that time I left word that I would like to have them tell Mr. Stephens that I would be there at a certain time the next day; that I wanted to talk to him again.

Q. Was he there then?

A. He was there the next time.

Q. Are you familiar with the arrangements under which your company has possession of this station?

A. I believe so; yes, sir.

Q. Will you state them, please?

A. It is the——

Mr. Dixon: I object to that. The document in evidence is the best evidence of that arrangement, your Honor.

The Court: I am going to allow them to ask the question similar to the one he asked Mr Musser. Go ahead.

A. It was originally a direct lease from the Defense Plants Corporation to the Standard Oil Company of California.

By Mr. Mathews:

Q. On what basis was the rental?

A. Gallonage rental.

Q. Does that mean that the landlord is paid in accordance with the amount of gallons sold from that station?

[fol. 1677] Mr. Dixon: I object to that question, your Honor.

The Court: Overruled.

Mr. Dixon: To the form of the question.

The Court: Overruled.

A. The landlord is paid on the amount of gallons which we deliver to that station during any calendar month.

Q. Did you ever have any objections respecting the operations of this station by Mr. Stephens?

A. I don't quite understand your question.

Q. Did any members of the public criticize his operations to you or object?

Mr. Dixon: I object to that question, your honor.

The Court: I will ask that be merely answered yes or no. The only thing I am going to allow is, as I did on the other, if there was any communication of the facts to Stephens. You may answer just yes or no.

A. Yes.

The Court: All right. Did you communicate those to Stephens? Did you talk to him about them?

The Witness: Yes.

By Mr. Mathews:

Q. Did these conditions in which this station was maintained and the standard of operations improve?

A. No, sir.

Q. During the time you visited it?

A. No, sir. Not only that, but the complaints that we [fol. 1678] had continued to accrue against the station.

Q. As a result of these facts did you come to any conclusion regarding this station?

A. May I go back just a little bit? We and the company feel that we should do everything we can to make a successful dealer. He is an independent merchant but we try to assist him. And in the meantime I had sent in our merchandiser at least once a month to Mr. Stephen's station to work with him for a minimum of one day for a four-months period.

Mr. Dixon: If the court please, I move that all of that testimony be stricken as irrelevant and immaterial.

The Court: No; I think it is admissible. This, again, is testimony and they want to know why they get these suggestions, because you yourself bring them out by insisting on the fact that he is an independent dealer. They have a right to explain why, despite the fact that they feel that they are warranted in making suggestions and conveyance complaints to them.

By Mr. Mathews:

Q. Do I understand that there was no favorable results from your effort?

A. That is right.

Q. Did you come to a conclusion regarding Mr. Stephens and this station?

A. Yes. I think it was possibly around the first of June, [fol. 1679] due to the fact I didn't seem to be able to bring any improvement and was having—I was afraid it was going to become more serious a complaint from our landlord because the rentals were dropping off——

Mr. Dixon: If the court please, I object to that testimony. There is a limit to it.

The Court: You are rationalizing your answers too much now. You said you came to a conclusion. Let us get down to what you did.

A. I made a recommendation to Mr. Gunnels, who was then my district sales manager at Phoenix, that we terminate our agreement with Mr. Stephens.

By Mr. Mathews:

Q. Was that done?

A. Before the termination was favorably acted upon the branch was transferred under Bakersfield and the district manager at Bakersfield accepted the recommendation, first, that we attempt to get a mutual termination. I believe that was presented to Mr. Stephens sometime in July.

Q. Mr. Stephens testified in this case and during his testimony he stated, the statement appearing on page 521 of the record, that "he found two tires hid back in the back part of my stock room." "He found", that being you in this case. Did any such incident occur?

A. Not to my knowledge.

Q. He stated, the statement appearing on page 522 of the record, that you asked him what the tire was doing [fol. 1680] in there and he told you he had a chance to purchase them, since the Standard Oil was unable to supply him with them; he had a number of calls for that type of tires, so he purchased them and put them back in the stock room. Did that or any similar statement occur?

A. No, sir.

Q. Was that or any similar statement made?

A. No, sir.

Q. Mr. Stephens stated, the statement appearing on page 523 of the record, that you told him to discontinue handling any competitive accessories, as at the present

time there was plenty of merchandise available from Standard Oil TBA supply houses. Did you tell him any such thing or anything like that?

A. That is incorrect. Frankly, I never solicited him for any TBA merchandise. I was more concerned with the appearance of the station.

The Court: Well, the question is, did you ever——

The Witness: No, sir.

The Court: Did you ever complain to him?

The Witness: No, sir.

The Court: About his handling competitive merchandise?

The Witness: No, Judge; I didn't.

By Mr. Mathews:

Q. Were you ever aware whether or not he had competitive merchandise?

[fol. 1681] A. You are going to force me to say no; I don't remember whether he did or not. Mr. Thompson might not like that.

The Court: Did you see any about on the shelves for oil?

The Witness: No. Frankly, Judge, I was not paying any attention to his merchandise.

The Court: You were not. All right.

Mr. Mathews: That is all.

Cross-examination

By Mr. Dixon:

Q. Mr. Turner, does the Standard Oil Company furnish Mr. Musser or any of the people at his station—I mean Mr. Stephens, with any uniform to be worn by him while operating or running the station?

A. No, sir.

Q. Did they furnish him with any neckties that you feel should be worn by the dealer operating the station?

A. No, sir.

Q. You do furnish them, though, to your company operated station employees at cost, don't you?

A. I am unable to answer that.

Q. You don't know that?

A. I don't know that? I have nothing to do with Standard stations.

[fol. 1682] Q. Now, is the dealer operating a station notified as to when you are going to come around to visit him?

A. No, sir.

Q. So that if he was not there when you came, why you would not feel that that was anything to hold against him, would you?

A. No, sir. But the service station business is so highly competitive at the present time that if a man is going to stay in the business, make a profit in such a business, he better be there.

Q. Oh, you feel that he should be there all the time?

A. He should be there a great portion of the time for his own protection. That man is an independent business man but he has got to make a profit.

Q. I see. And the more he makes, you mean the more Standard makes, it that correct?

A. Oh, naturally.

Q. Yes. And it is a fact, is it not, that this station increased its gallonage considerably while Mr. Stephens was operating it? Isn't that a fact?

A. I couldn't say. That is prior to my time.

Q. You don't know what the records were, then, with reference to the increase in gallonage of this station by Mr. Stephens, do you?

A. I do know that he went up and then he started down.

[fol. 1683] Q. And do you know what the reason was, if any, for the decrease?

A. I know that there were other competitive stations entered into the picture.

Q. It is a fact that there were about five additional stations that opened in the immediate vicinity of Mr. Stephens' station, isn't that true?

A. What would you call the immediate vicinity?

Q. Well, in the immediate vicinity.

A. How many miles, how many miles?

Q. Well, just answer my question if you can.

The Court: No, no. He is entitled to find out. You are an easterner, but you can go 60 miles in either direction to find a farm house in that section. I know I was invited once when I was holding a court in Carson City, I was asked by a former Californian if I would join him for dinner.

Mrs. Yankwich and I were there. We said yes. I said, "Where?" He said, "At my folks' ranch." We went to Falon, 70 miles straight. Distances mean nothing in that state.

Mr. Dixon: We won't make it that bad, your Honor, since the witness seems to want to ask the lawyers a question rather than to answer. I will say five miles then, from Mr. Stephens.

The Court: All right.

[fol. 1684] By Mr. Dixon:

Q. Do you know of any stations within five miles of this station?

A. I think there were three opened after the time that he opened that station.

Q. And when were those stations opened, Mr. Turner?

A. Well, they were opened prior to my time.

Q. When did you take over this territory?

A. March the 1st, 1947.

Q. Oh, I see. So that all of your knowledge about how dirty and how untidy Mr. Stephens was, and so on, was that which was acquired subsequent to that date?

A. Subsequent to that date; yes, sir.

Q. Did you take into consideration, as a good Standard Oil official, the fact that he did serve and increase the gallonage at this station considerably before the time that you came around?

A. Naturally.

Q. But you did not inquire as to whether he had, did you?

A. I have the records, what we call the S-6 book.

Q. Will you then state from those records what the gallonage increase was that was effected by Mr. Stephens up to the time that you became director of this area under which Mr. Stephens was operating?

A. I don't recall the figures exactly because I haven't [fol. 1685] got them with me. I think that at one point, according to his testimony, he reached 41,000 gallons, which, I think is of a substantial character.

Q. Is that a small station?

A. That is a very nice station.

Q. And do you know whether Mr. Stephens was paying the Standard Oil any minimum rent for the use of this property each month?

A. Mr. Stephens was paying $100.00 a month plus whatever the signs were. $102.75, I think, was the rental, wasn't it? Does the lease show? Plus three-quarters of a cent a gallon.

Q. And that was the amount that he was bound to pay?

A. Yes, sir.

Q. I mean minimum rental?

A. Yes, sir.

Q. I will ask you to refer to Exhibit 43 and particularly paragraph 10 of that document, and ask you if you find anything in that document which gives to the Standard Oil Company any right to direct the affairs or conduct of Mr. Stephens at that station?

A. No, sir.

Q. And that expresses, does it, the entire arrangement between Mr. Stephens and the Standard Oil Company in connection with the operation of those premises insofar as [fol. 1686] the right to control his activities is concerned?

A. Yes, sir.

Q. By the way, who succeeded Mr. Stephens in operating the station, do you know?

A. Mr. Earl C. Turner.

Q. And is he a relative of yours?

A. He is.

Q. What relationship?

A. He is my brother, half-brother.

Mr. Dixon: That is all.

The Court: All right.

Mr. Mathews: Just a question or so, your Honor.

Redirect examination.

By Mr. Mathews:

Q. Referring to the agreements with Mr. Turner, I note they are dated in 1945.

A. '45 is it?

Q. Did you have possession of this station before that?

A. I don't know.

Mr. Mathews: That is all.

The Court: All right, step down, Mr. Turner. Call your next witness.

Mr. Hall: Defendants at this time, if the court please, desire to offer into evidence the depositions of Francis S.

[fol. 1687] Olaine, L. M. Bussert, and Harry T. Hays, taken at San Francisco on March 9, 1948 by the Government. And annexed to the depositions are certain exhibits and there are two exhibits loose which were marked at the time of the deposition.

The Court: Will you hand them to me and I will examine them before they are marked?

Mr. Hall: The offer of the deposition is intended to include the offer into evidence of all of the exhibits which were identified in connection with the taking of the depositions and marked and submitted therewith.

Mr. Dixon: The Government objects to the use of the depositions in evidence on the grounds that the witnesses may be available.

Mr. Hall: I will be glad to put a witness on the stand, if the court please, if the court desires a showing, that each one of these witnesses is a resident of the Bay area near San Francisco, either San Francisco or some place in the Bay area, and therefore within the Rule.

The Court: The 100-mile rule.

Mr. Hall: I beg pardon?

The Court: It is the 100-mile rule, isn't it? If they are farther than 100 miles, that you may use the depositions.

Mr. Dixon: That is right, your Honor. There is such provision. It is discretionary, as we understand, with the [fol. 1688] court, and certainly in this instance, when these people whose depositions are offered are employees of the Standard Oil Company, the defendant in this action, we submit that they can be presented in court for their examination.

The Court: I know. They may derive an advantage from the fact, also, that you examined them and did not use them, and they may have given testimony under your examination which may be stronger in its effect than if they were examined directly.

One other thing. Let me say this, gentlemen: Are there any objections to any of the questions? If so, I want them waived, because my rule in taking these depositions when I try a case without the jury is to order them transcribed, and I read them in between time, rather than have counsel read them into the record again.

Mr. Hall: Yes, sir.

The Court: That is where we gain time. But I cannot

do it unless all objections are waived, if there are objections in them.

Mr. Hall: All my objections are waived.

The Court: I do not suppose you have any objections unless there are objections on cross examination. Was there any cross examination?

Mr. Hall: Yes; there was in this case, your Honor.

Mr. Dixon: I believe there are objections, but of course this is a court of equity and your Honor certainly can, in [fol. 1689] reading the depositions, determine what is effective one way or the other.

The Court: The only thing is I would prefer that. I do not like—what is the expression—to buy a pig in a poke. I do not want to take a record which may contain a very important objection that might trouble us. If not, we can go through the record and I can rule on the objections you have now.

Mr. Dixon: We do not have the record here, your Honor. I don't know——

The Court: Do you have copies?

Mr. Dixon: We have copies of it; yes.

The Court: Supposing you do this: Deem that all objections are waived, assuming there are some, and you reserve the right on examination, if you find one you want to preserve, to call it to the attention of the court. Is that all right?

Mr. Hall: That is agreeable with us.

Mr. Dixon: Except that we object to the use of the depositions, as I said, under the rule, and ask that the witnesses be produced.

The Court: Yes. I will overrule that objection and the testimony will be received.

I think the depositions will be given a number and I will order them transcribed in any record to be prepared in [fol. 1690] this court. Then I shall read it, and when I have read it I will state for the record what I have read.

Mr. Hall: Will you Honor order also that the exhibits which are a part of the depositions be also copied into the record, with the exception of the large maps?

The Court: No. You are going too fast for me this time. Just a minute. I am going to do better than that, you see. I am going to take the exhibits and give them new numbers in sequence.

Mr. Hall: Very well.

The Court: Now, let me see what they are.

Mr. Hall: There are three exhibits annexed to the depositions.

The Court: All right.

Mr. Hall: And then there are two separate.

The Court: All right, I have got them now.

The exhibit attached to the depositions which is designated as Plaintiff's Exhibit A-1 for identification and which bears the legend Bulk Distribution Map Exhibit 'A' (See Note) will be marked as what?

The Clerk: I have not given the deposition a number yet, your Honor.

The Court: Oh, I beg pardon.

The Clerk: The deposition is Defendants' JJ.

The Court: Mark the exhibit and then I will mark the [fol. 1691] others with a pencil.

Mr. Hall: Might I offer a suggestion, your Honor?

The Court: Yes.

Mr. Hall: One of the large maps here is Exhibit A and one of the sheets annexed to the deposition is A-1, which explains the map. Then another map is B and then there is B-1.

The Court: All right; I will take them in that order. "Plaintiff's Exhibit A" for identification attached to the deposition will be received into evidence as——

The Clerk: KK.

The Court: KK.

[fol. 1692] Mr. Dixon: May the record show here an objection to the admission of it on the ground it is irrelevant and immaterial.

The Court: I agree that you may have been fishing, and that sometimes by deposition you can fish, but I am not going to let you cut bait that fast and get away with it.

I think there must have been something, and I can't tell in advance what it is, but I will take a chance on it being material because you saw the depositions.

The objection is overruled.

Plaintiff's Exhibit A-1, for identification, attached to the group of depositions, which is entitled "Bulk Distribution Map, Exhibit A" will be received as——

The Clerk: Exhibit LL.

The Court: —Exhibit LL.

Then that brings up this one, Plaintiff's Exhibit B, for

identification, attached to the deposition, being a map, and which will be received as——

The Clerk: Exhibit MM.

The Court: —Exhibit MM.

Plaintiff's Exhibit B-1, for identification, consisting of two sheets, and entitled "Package Goods Distribution," will be received as——

The Clerk: Exhibit NN.

The Court: Exhibit NN.

[fol. 1693] Mr. Dixon: And may the record show our objection?

The Court: Subject to the same objection, which is overruled.

Then Plaintiff's Exhibit C, for identification, attached to the depositions, which bears the legend of "Accessory Warehouses," giving the cities and the area, will be received in evidence, subject to the same objection, which is overruled, as——

The Clerk: Exhibit OO.

The Court: Exhibit OO. Are there any more exhibits?

Mr. Hall: I believe that is all. I think they have all been covered.

[fol. 1694] (The depositions of Francis S. Olaine, L. M. Bussert, and Harry T. Hays—marked herein as Defendants' Exhibit JJ—are in the words and figures following, to-wit:)

(Note: In copying these depositions the reporters have corrected the spelling of Mr. Thody's name from "Thrody".)

[fol. 1695] In the District Court of the United States

[Title omitted]

Stipulation Regarding the Taking of Depositions

It is hereby stipulated by and between plaintiff and defendants, by their respective attorneys, that depositions of the herein named deponents shall be taken before Edith Gosney, Notary Public for the County of San Francisco, State of California, and that such depositions shall be taken down stenographically and then transcribed. The taking of such testimony shall begin at 2:00 P. M. on the

9th day of March, 1948, at Room 1712 of the Standard Oil Building, 225 Bush Street, San Francisco, California, and shall continue until completed within the time allowed for the taking of testimony.

[fols. 1696-1697] Names of Deponents: Francis Olaine, L. M. Bussert, Harry T. Hays.

Dated March 2, 1948.

William C. Dixon, W. Alan Thody, Lawrence W. Somerville, Attorneys for Plaintiff. By (Signed) W. Alan Thody. Lawler, Felix & Hall, Pillsbury, Madison & Sutro, John M. Hall, Attorneys for Defendants. By (Signed) John M. Hall.

[fol. 1698] In the District Court of the United States for the Southern District of California, Central Division

[Title omitted]

Be It Remembered, that on Tuesday, the 9th day of March, 1948, at 2:00 p. m. and Wednesday, the 10th day of March, 1948, at 9:00 o'clock a.m., pursuant to stipulation between counsel for the respective parties, at Room 1712, Standard Oil Building, 225 Bush Street, San Francisco, California, personally appeared before me, Edith Goewey, a Notary Public in and for the City and County of San Francisco, State of California,

Francis S. Olaine, *L. M. Bussert*, and *Harry T. Hays*, witnesses called on behalf of the plaintiffs herein.

W. A. Thody, Esquire, and Lawrence W. Somerville, Esquire, Special Assistants to The Attorney General, appeared as attorneys for the plaintiffs.

Messrs. Lawler, Felix & Hall, represented by John M. [fol. 1699] Hall, Esquire, and Messrs. Pillsbury, Madison & Sutro, represented by Henry G. Hayes, Esquire, appeared at attorneys for the defendants.

The said witnesses, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the above-entitled cause, did thereupon depose and say as hereinafter set forth.

It was stipulated between counsel for the respective parties that the Notary Public, after administering the

oath to the witnesses, need not remain further during the taking of these depositions.

It was further stipulated that the said depositions should be recorded stenographically by Harry A. Cannon, a competent official shorthand reporter and a disinterested person, and thereafter transcribed by him into longhand typewriting, to be read to or by the said witnesses, who, after making such corrections therein as may be necessary will subscribe the same.

It was further stipulated that all objections to questions propounded to the said witnesses shall be reserved by each of the parties, save and except any objections as to the form of the questions propounded.

It was further stipulated that if the witnesses should be instructed not to answer questions propounded by counsel, in the absence of the Notary Public, it shall be deemed [fol. 1700] that the Notary Public has so instructed the witnesses to answer, but that the witnesses still refuse to answer.

FRANCIS S. OLAINE, a witness called on behalf of the plaintiffs, being first duly cautioned and sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

Mr. Thody:

Q. Will you state your name?
A. Francis S. Olaine.
Q. Your address?
A. 225 Bush Street, San Francisco.
Q. Your present position?
A. Analyst, Distribution Department.
Q. What is the nature of your duties in connection with that position?
A. Well, the basic function of the Distribution Department is to arrange for the distribution of Petroleum products to points where they are required and when they are required and at the lowest practicable distribution costs.
Q. How long have you held that position?
A. Six years in the analyst capacity, and—

Q. Have you served in other capacities previously?
[fol. 1701] A. Yes. In distribution work I have been with the Company twenty-five years.

Q. You are acquainted, of course, with the distribution system of Standard Oil in the states generally known as the Western Area? I refer to the states of California, Oregon, Washington, Idaho, Utah, Nevada, and Arizona, and also New Mexico.

Mr. Hall: Well, pardon me a minute, Mr. Thody. As disclosed by our Answer in this case, the Standard Oil Company of California does not distribute in the State of New Mexico and has no dealers in the State of New Mexico. So, I think that is out. I am sure it is out as far as this witness is concerned.

Mr. Thody:

Q. With the exception of the State of New Mexico then, you are acquainted with the distribution setup of Standard?

A. Yes, sir.

Q. In these other states I have mentioned?

A. Yes, sir.

Q. Where are the various refineries located?

A. There are three of them in California: at Richmond, at Bakersfield, and at El Segundo.

Q. Do these refineries provide the source of gasoline for those States referred to in the Western Area, with the exception of New Mexico?

[fol. 1702] A. Not entirely. We also obtain gasoline from a refinery at Salt Lake City and from a refinery at El Paso, Texas.

Q. The crude oil which is used in the three refineries you have referred to, which are owned by Standard, could you tell us where said crude originates from with respect to each of those?

A. No. I am not qualified to answer that question.

Q. Well, I understand your knowledge begins after the refinery?

A. Yes. Generally speaking, when the products are in finished form and in distribution for our bulk plants.

Q. Now, in the marketing area that is referred to in these seven states is there any general pattern of distribu-

tion which is followed—do you have certain distribution areas?

A. Yes. As indicated on the map, we have approximately twenty-four.

Q. Twenty-four?

A. Twenty-three that are numbered, and there are two carrying the same number because they are from the same source.

Q. I think you better refer to the map. Will the Reporter mark this map for identification?

(The said map was marked "Plaintiff's Exhibit A for [fol. 1703] Identification.)

Q. Could you tell us who prepared this map (referring to Exhibit A.)?

A. I prepared it.

Q. And it does represent the various distributing areas of the seven western states?

A. Yes, sir.

Q. Could you indicate to us the distributive areas?

A. There are twenty-three marked—.

Q. You said there are twenty-four.

A. The reason for the twenty-four is that these two areas here (indicating) are supplied direct from Richmond by tank car and truck, and we use the same number because——

Mr. Hall: The witness has just been referring on Exhibit A for Identification to the areas which are marked "2".

Mr. Thody: That is correct.

Q. Could you indicate to us, Mr. Olaine, the distributive areas that are supplied by your Richmond refinery?

A. Well, I can. I will refer to them by the source of their supply. For instance, this area here as indicated on these accompanying sheets here (indicating).

Q. I think for the record it might be better to refer to the number.

A. Distributive Area No. 11 is supplied from terminals [fol. 1704] at Sacramento, Napa and San Rafael.

Q. Now, each of these terminals you refer to in Distributive Area No. 11 receive their gasoline from the refinery——

A. By barge.

Q. —by barge?

A. Each of these three marine terminals, and they in turn redistribute by tank car and by tank truck into the area marked No. 11.

Mr. Hall: I think you can shorten this a great deal, Mr. Thody, if I may make a suggestion.

Mr. Thody: Please do so.

Mr. Hall: By reference to the explanatory sheets that the witness has provided which with respect to each of the numbered districts shows the point from which the products originate and how they pass to the bulk plants.

Mr. Thody: Yes. I see. With respect to No. 11, that is precisely the information we developed.

Q. All right. Can you generalize with the statement you have before you, Mr. Olaine, on the distribution outlets of these various distributive areas; is there any common uniform pattern as far as the general procedure of distribution in each distributive area, or are the problems of distribution peculiar to each area?

A. —

[fol. 1705] Mr. Hall: Now, that isn't clear to me, that question, Mr. Thody. I will interpose an objection to the form of the question.

Mr. Thody: I will withdraw the question.

Mr. Hall: Off the record.

(Discussion off the record.)

Mr. Thody:

Q. Mr. Olaine, with respect to Distributive Areas Nos. 1, 2, 3 and 4, you have indicated they are supplied from the Richmond refinery, is that correct?

A. 1 and 2 are the Richmond refinery,——

Q. Oh.

A. —and 3 is the Bakersfield refinery, and 4 is the El Segundo refinery.

Q. And in those cases do I understand the supply is directly from the refinery itself?

A. Yes, sir.

Q. Now, the means of transporting from the refinery, in the instance of Area No. 1, you have indicated by barge, tank cars and or tank trucks?

A. Yes, sir.

Q. Who owns those tank cars and those barges and tank trucks for Area No. 1, or for all distribution from the refineries?

A. We do not, as I understand it, own the tank cars. They are a lease arrangement with which I am not entirely [fol. 1706] familiar.

Q. You have them under lease from the——

A. From the tank car company.

Q. But they are under your direction and control?

A. Yes, sir.

Q. You dispatch those cars and so on?

A. Yes, sir.

Q. How is the gasoline, and so, distributed from the refineries picked up at the—is there some section, some particular division of the refinery that dispenses the gasoline?

A. Well, in each case the—there are loading racks for the tank cars and loading racks for the tank trucks, and, of course, the barges at Richmond are loaded over the wharf.

Q. Now, are these tank cars and these tank trucks—are they manned by personnel of Standard?

A. Well, in speaking of tank cars manned, how is the term used?

Q. By the personnel.

A. We simply load the tank cars—our personnel load them, and also the tank trucks and also the barges.

Q. The tank cars, and they are handled by the railroad, they also like any other shipment of goods?

A. That is right.

Q. And the tank trucks, do you have your own fleet of [fol. 1707] tank trucks?

A. We hire commercial tank trucks, and we also have our own motor tank trucks.

Q. At all times though the tank trucks are under your jurisdiction and control—you dispatch them and you know at the time the approximate time of departure and the approximate time of arrival?

A. Yes, sir.

Q. They leave the loading tank rack, and they are conveyed where in each area? You say in connection with the group here, No. 1——

Mr. Hall: If you are going to use that, hadn't it better be marked as an exhibit—marked Exhibit A-1 for Identification?

Mr. Thody: Yes. Will you mark this?

(The document entitled "Bulk Distribution Map Exhibit 'A'" was marked "Plaintiff's Exhibit A-1 for Identification" and is attached hereto.)

Q. After they leave the loading rack of the refineries, they are conveyed by these various methods to what points—what will be the ultimate destination in these areas be? First, destination from the refinery, and then the ultimate destination.

Mr. Hall: Just a minute. What do you mean by "they"?

Mr. Thody: I am referring to the tank cars and tank trucks. They are dispatched from the refinery to—where [fol. 1708] would they go in these various areas?

A. They will go to the bulk plants as marked on the map; those individual small dots—to our individual small stations.

Mr. Hall: So as to avoid confusion, you are, of course, referring to the districts which have been marked on Exhibit A for Identification as 1, 2, 3, 4, is that right?

Mr. Thody: Yes. They go from——

Mr. Hall: Off the record.

(Discussion off the record.)

Mr. Thody: Exhibit A-1 for Identification, can you tell me under whose—who prepared it?

A. I prepared this exhibit.

Q. In your official capacity as Analyst under the——

A. Distribution Department.

Q. Distribution Department?

A. Yes, sir.

Q. Will you address yourself, Mr. Olaine, to the first group of distributive areas, Nos. 1, 2, 3 and 4, again, and tell us the steps in the distribution of gasoline from the refineries to the ultimate service stations in those particular areas? Now, you indicate here that the gasoline leaves the refinery by tank cars. Can you trace it through the various steps from the refinery to the service stations?

A. Well, I can only trace it as far as the bulk plants

[fol. 1709] as indicated on this explanation here (Referring to Exhibit A-1.).

Q. After the tank trucks and tank cars referred to there —after they leave the refinery, they place the gasoline in bulk——

A. Plants.

Q. —plants?

A. Yes, sir.

Q. Are these bulk plants owned by Standard Oil?

A. Well, I don't know that I am qualified technically to answer that question. We speak of all of these points shown as our bulk plants, but whether they are actually owned, I don't know that I am qualified to——

Mr. Hall: They all belong to Standard Oil Company of California, if you want that stipulation.

Mr. Thody: Fine.

Q. How are the orders placed by the bulk plant operators? Do you receive the orders from them or do you give them a ready supply?

A. Well, there are two systems; where bulk plants are supplied directly from the refineries, the bulk plants——

Q. I am referring only to that group.

A. Yes. The bulk plants place their orders directly on the refineries. We have a distribution department office at the Richmond refinery and at the El Segundo refinery, and [fol. 1710] these orders are sent directly to them and they arrange for the shipment from the refineries.

Q. From the bulk plants, how is the gasoline placed into the distribution channels, the movement of the stock from the bulk plants?

A. Well, that is beyond our jurisdiction.

Q. How is the gasoline sold? What are these various bulk plant operators; are they employees of Standard?

A. Well, there again I am not fully qualified on that. They may be or they may not. I am not familiar with just what——

Q. Do they buy the gasoline on consignment or do they buy or is it all Standard—does Standard have title to that gasoline in the bulk plants?

Mr. Hall: That is a legal conclusion. We will object on that ground.

A. I am sorry: I am not qualified to answer that. We arrange to see that these bulk products are supplied to these bulk plants, but I am not qualified to say just what the selling and——

Mr. Hall: Off the record.

(Discussion off the record.)

Mr. Thody:

Q. Then as I understand, Mr. Olaine, then it is your testimony on this first group that the gasoline is shipped directly from the refineries to the various bulk plants?

[fol. 1711] Mr. Hall: And, if I may first interrupt, you are referring to Exhibit A-1 and to the Distributive Areas Nos. 1 to 4, inclusive, is that correct?

Mr. Thody: That is correct.

A. Yes.

Q. Can you tell us how many bulk plants are located in each of these distributive areas?

A. No, sir, I cannot. I would have to determine that.

Q. Are the dots on Plaintiff's Exhibit A for Identification—the dots in each of these areas, black dots, do they refer to the location of the various bulk plants?

A. Yes, sir.

Q. They——

A. Now, I might qualify that. That map was issued back in July and there may be some stations there that have been closed or there may have been a few that may have been opened, but otherwise they are approximately the marketing plants throughout these various states.

Q. Is there any set delivery time for gasoline from the refineries to the bulk plants, to each of the bulk plants? Do you have a regular pattern, a regular schedule?

A. Well, from Richmond to these points they are supplied in Distributive Area No. 1 by barge. Barges operate on a twenty-four hour basis, and in some cases they may [fol. 1712] make delivery at one time at night and at other times during the day. In connection with delivery by tank car and tank trucks, generally speaking that would be a day time delivery. I mean, the cars might be put in at any time but they will be unloaded during the day time.

Q. On the barges, where it is indicated the barges are

used, that is continuous shipments from the refinery—you say, it is over a twenty-four hour period?

A. In Distributive Area No. 1 those barges operate in San Francisco Bay here on a twenty-four hour basis.

Q. Then the movement and flow of gasoline through barges is continuous over the twenty-four hour period each day?

A. Yes, sir.

Mr. Hall: Well, now, wait a minute. That was with respect to Area No. 1 only.

Mr. Thody: That is the only one that refers to barges?

Mr. Hall: Oh, no.

A. There is a considerable number of them wherein there are barges.

Mr. Hall: Barges on the Columbia River,——

Mr. Thody:

Q. But only as far as the barges on No. 1,——

A. Distributive Area No. 1.

Q. And then what is the time of loading for tank cars on Areas Nos. 1, 2, 3 and 4? Is that continuous or is that just during certain hours of the day?

[fol. 1713] A. That is during the normal working hours of the day at the refineries.

Q. Now, that is so with respect to each of these areas referred to in the first category, Nos. 1, 2, 3, and 4?

A. With respect to tank cars.

Q. Tank cars, that is what I understand. You mean by that that the deliveries are made every day to——

A. (Interposing) The loading of tank cars. We have a five day work week at the refineries. In other words, there is no loading, generally speaking, on Saturday, and, of course, none on Sunday or on holidays. But during the normal working hours, why, tank cars are loaded every day.

Q. So, for five days each week then tank cars will be leaving for these various bulk plants?

A. Yes.

Q. Is that correct—somewhere in these various area, in the areas to which you have referred, 1, 2, 3, and 4?

A. Yes, sir.

Q. What is the schedule for loading of tank trucks?

A. I am not familiar with the tank trucks loading schedule because I believe in some cases they operate beyond the normal eight hour working day and they may operate until later on in the evening. I am not familiar with just what those schedules are.

Q. Would they load every day?

[fol. 1714] Mr. Hall: Whereabouts, Mr. Thody?

Mr. Thody: I am referring to the particular four distributive areas, 1, 2, 3, and 4.

Mr. Hall: Where generally the products are coming directly from the refineries to?

Mr. Thody: That is all.

Q. The testimony you have given refers only to this category?

A. Yes.

Q. Every day then tank trucks will be——

A. (Interposing) Dispatched, yes.

Q. Those tank trucks and tank cars will go directly to the bulk plants in each of those areas referred to?

A. Yes, sir.

Q. Each day?

A. Yes, sir, substation bulk plants in those areas.

Q. Is there any established routine or delivery schedule for each bulk plant? By that I mean, for instance, every Thursday does "Bulk Plant X" receive a delivery of gasoline, or is it only in pursuance of the orders placed by them?

A. That is right, in pursuance of the orders placed by them. There is no specific day or time that these orders are to arrive.

Q. So, each bulk plant would not necessarily receive a [fol. 1715] daily shipment?

A. Oh, no, sir—no, sir.

Q. Do you know of the capacity of each of—the gasoline capacity of each—refining capacity of each of the refineries?

A. No, sir, I do not.

Q. Do you have a breakdown on the types of petroleum products, the classifications of various types of petroleum products distributed by you? In the industry is there any general recognized classification of petroleum products?

A. Well, I don't know just exactly how to answer that question. Petroleum products will cover a very considerable number.

Q. Are they referred to sometimes as package goods and sometimes as bulk goods?

A. Oh, yes, sir. That is what we have in this sheet.

Q. This refers to—only to——

A. (Interposing) Bulk products.

Q. And by bulk products——

Mr. Hall: Just a minute. When counsel said "this", he was referring to document which has been marked Plaintiff's Exhibit A-1 for Identification.

Mr. Thody:

Q. In preparing Exhibit A-1 for Identification, you used the term "bulk distribution". What is meant by that term?

A. Bulk distribution is meant to apply on those products [fol. 1716] that are moved from the refineries in tank cars, tank trucks, and barges, and in tankers. Now, we are referring to the entire sheet there, I presume?

Q. Yes.

A. That covers all of those types of transportation handling what we refer to as bulk products.

Q. Does the term "bulk products"—or "bulk distribution" also refer to products other than gasoline?

A. Yes, sir. Refers to gas oils or other products that would be handled by these means of transportation, handling them in bulk form.

Q. Could you list them? What is embraced by "gas oil"?

A. Well, in our company we have products known as Standard diesel fuel, Standard stove oil, Standard furnace oil.

Q. Now, in—do all of the items go to the bulk plants?

Mr. Hall: You mean, all of the items he referred to in his previous answer?

Mr. Thody: All the items referred to in the previous answer.

A. Not necessarily. There will be some bulk plants that will carry one or two grades of motor gasolines, possibly one grade of these gas oils I have just mentioned. Other plants will carry all grades of these various products.

Q. In respect to those classifications referred to in your previous answer, will the bulk plants have facilities for

[fol. 1717] segregation in individual tanks, or will they have separate tanks for it?

A. They will have separate tanks. For example, a bulk plant that handles two grades of motor gasoline and one grade of gas oil, there will be three tanks, one for each grade of motor gasoline and one for the gas oil.

Q. Are lubricating oils included in the bulk distribution group?

A. Well, there are very few of these bulk plants that have bulk storage facilities for handling lubricating oils. Generally speaking, these bulk plants receive their lubricating oils in package goods. That is generally speaking, of course, in this entire area (indicating) with all of these various bulk plants.

Q. And by "package goods" you are referring to—I would like to introduce or have marked for identification the discussion marked "Package Goods Distribution—Map Exhibit 'B' ". Will you mark this "B-1 for Identification"?

(The statement entitled "Package Goods Distribution—Map Exhibit 'B' " was marked "Plaintiff's Exhibit B-1 for Identification.")

Q. Did you prepare this?

A. Yes, sir, I prepared this statement with respect to the map.

Mr. Thody: Will you mark this map for identification?

[fol. 1718] (The map relating to Exhibit B-1 was marked "Plaintiff's Exhibit B for Identification.")

Q. Will you tell what this represents?

Mr. Hall: Counsel refers to the document just marked for Identification "Plaintiff's Exhibit B".

A. There are four identified distributive areas that are marked "A", "B", "C", and "D", which show the approximate areas that are served by the Richmond refinery, the El Segundo refinery, and the Willbridge and Point Wells Distribution Terminals.

Mr. Thody:

Q. You prepared these?

A. Yes, sir.

Q. In your official capacity as Analyst in the Distribution Section?

Mr. Hall: He prepared them at our request, Mr. Thody. I don't think that falls within his official duties, but they were prepared by him because of his knowledge of the subject matter.

Mr. Thody:

Q. In reference to your testimony to the Distributive Areas 1, 2, 3, and 4 referred to in Exhibit A-1, in every instances does the gasoline go from the refinery only to bulk plants or in some instances does it go to marine terminals?

A. In some instances it goes to marine terminals insofar as District No. 1 is concerned, and in District—no, [fol. 1719] that is all—District No. 1.

Q. Could you tell us what a marine terminal is?

A. That is a bulk plant that has facilities to receive bulk stock by barges and/or tankers, and also has facilities for redistributing that stock by tank cars and/or tank trucks.

Q. It is not necessarily a larger storage facility than a regular bulk plant?

A. Yes, sir, they would have larger facilities than the so-called bulk plants which are located at inland destinations and receive stocks by tank cars and/or tank trucks only.

Q. Do you know the capacity of this marine terminal which is supplied in Distributive Area No. 1 referred to in Exhibit A-1?

A. No, I do not have the information available here with respect to the tankage facilities at the various marine terminals in Distributive Area No. 1.

Q. Is there a standard size for the capacity of the various bulk plants? Is there any uniform standard as to size? I assume there are large bulk plants and small bulk plants?

A. Yes, there are. Very definitely it varies with the size of the communities, the area which the bulk plant serves. I am not qualified to say there is a uniform measure for those plants. I know that in a great many of them [fol. 1720] there are certain size tanks that are of a certain capacity that generally are used, but they will vary from bulk plant to bulk plant.

Q. In Distributive Area No. 1, referred to in Exhibit A-1, do you know of the size of any of the bulk plants in that area?

A. Well, the number of points that are located in Distributive Area No. 1, I can presume from my—just my experience in handling shipments to those places that there are bulk plants that have tanks that are approximately 463 barrels capacity. That is known as a 10½ by 30 foot tank. We have a great many of those throughout our entire distributive areas, so I am quite certain there are tanks of that size in these bulk plants.

Q. What are these bulk tanks used for?

A. They are used to receive bulk products in large quantities for redistributing, over which we have no jurisdiction, in small quantities to their particular marketing area.

Q. Are they used for storage purposes?

A. Well, yes. That is why they are there, for storage purposes, so they can stock from those tanks.

Q. On a permanent basis?

A. Yes, sir, on a permanent basis.

Q. Or is it storage for—in connection with the distribution and the subdistribution?

[fol. 1721] Mr. Hall: Your question is not clear, Counsel. I am going to object to if on the ground it is vague and uncertain, it calls for a conclusion of the witness, speculation and conjecture.

Mr. Thody: In the placing of these bulk plants, was there any study made as to the particular advantages of one location over another?

Mr. Hall: Referring to the number of plants generally or in any particular?

Mr. Thody: In general—in, well, in general.

A. Well, the bulk plants are not under the jurisdiction of the Distribution Department, and we do not determine their location, but no doubt the department that handles that puts in adequate study in determining the geographical location of a bulk plant, for example, to serve their particular trade that is available in that area.

Q. I understand from your testimony then its principal function is for redistribution?

A. The bulk plants?

Q. Yes.

A. Yes.

Q. I refer to now in exhibit marked for identification A-1 to the second category of distributive areas, Area No. 5, and Area No. 6. I notice that you have indicated that these areas are supplied by tank cars and/or tank trucks from [fol. 1722] the Salt Lake City refinery—Salt Lake City refinery of the Utah Oil Refining Company, is that correct?

Mr. Hall: No, that is not correct, Counsel. If you will read the question.

(The record was read.)

Mr. Hall: That is not what A-1 shows. A-1 shows that Distributive Area No. 5 is supplied from the Salt Lake City refinery of the Utah Oil Refining Company. And that Distributive Area No. 6 is supplied from the El Paso refinery of the Standard Oil Company of Texas.

Mr. Thody: That is correct.

Q. Referring to Distributive Area No. 5, can you describe the manner in which the bulk goods are supplied from the Utah Oil Refining Company to the bulk plants indicated on the map in that particular area?

A. We set up standing instructions, standing order instructions at the Salt Lake refinery and the stations that are shown in that area marked "No. 5" are instructed to send their orders to Salt Lake for filling, and upon receipt of those orders then the Salt Lake refinery ships the bulk stocks back to the bulk plants.

Q. In Area No. 5 referred to will the tank cars and tank trucks load at the Utah Oil refinery at Salt Lake City or are there sub-terminal points?

A. Well, I don't know that I am fully qualified to answer [fol. 1723] that. My understanding is that they load at the Utah Oil Refining Company. Now—and that is at Salt Lake City, and they have tank truck loading and tank car loading facilities, and are shipped directly from the refineries, I understand, but I am—I have never been to Salt Lake City and I can't say I am fully qualified technically to say just exactly what the layout is there.

Q. Is that gasoline received from the Utah Oil Refining Company purchased by Standard?

A. I am not fully qualified to answer that. We are informed as to the quantity that is available to us there for

reshipment into this distributive area and we arrange to see that that quantity is not over-shipped over any given period of time.

Q. Is that pursuant to a contract?

A. Well, there again I am not familiar with just what the arrangement is with the Utah Oil Refining Company. As the Distribution Department, we receive information indicating that volume that is available for shipping.

Q. Is there a guaranteed volume available to you, a guaranteed supply?

Mr. Hall: I think that calls for the conclusion of the witness—is objected to on that ground.

Mr. Thody: What is the volume?

A. I am sorry, I am not in a position to say just exactly [fol. 1724] what that is at this time. I don't know. But it is sufficient to take care of the distribution.

Q. What determines the volume?

Mr. Hall: You mean, that is the volume that is shipped out of the refinery at Salt Lake?

Mr. Thody:

Q. What determines the volume of gasoline made available to you for shipment through Distributive Area No. 5?

A. Well, that is determined by orders from—whatever arrangement it is—contract—or such as it is. I'm not familiar with just what that is.

Q. You do not know—do I understand your testimony to be that you do not know whether the—strike that.

Off the record.

(Discussion off the record.)

Q. Are each of the dots referred to in Exhibit A in Distributive Area No. 5 bulk plant locations?

A. Yes, as far as I know. I might make this qualification. There may be an occasional one in this district, in Distributive District No. 5, and in others, other districts that happen to be shown there that may just receive package stocks. That is a marketing plant map.

Q. Well, confine——

A. Generally speaking, those are bulk plants, all of those points in District No. 5.

[fol. 1725] Mr. Thody: Off the record.

(Discussion off the record.)

Q. In Area No. 5 do you know how the bulk plants are operated, either by Standard personnel or by some other arrangement?

A. No, sir, I do not.

Q. Do you know how often shipments are made out of the Utah Oil refinery in, first, tank cars to the various bulk plants?

A. No, sir, I do not. There are quite a number of stations in there, and I would presume that——

Q. By "stations" you refer to bulk plants?

A. I mean bulk plants — that deliveries—shipments, rather, out of Salt Lake refinery are possibly made daily.

Q. But you cannot say?

A. I cannot state that definitely, no, sir.

Q. What is the situation with respect to tank trucks?

A. That would be the same situation as far as I am concerned. I cannot definitely state that it is done daily.

Q. Do you know how shipments are made? Are they made pursuant to orders from the various bulk plants?

A. Yes, sir. The orders are placed by the bulk plants with the Salt Lake refinery and they are shipped.

Q. Are they placed directly with the Utah Oil Refining Company or are they placed with a Standard representative?

[fol. 1726] A. Our standing order instructions are placed directly with Utah Oil Refining Company. I might have to double check that to be absolutely certain, but I believe that to be the procedure.

Q. Are all types of bulk goods distributed from the Utah Oil Refining Company to these various bulk plants?

Mr. Hall: You mean—May I have the question, please?

(The record was read.)

Mr. Hall: You mean, Mr. Thody, the category that he previously referred to as gasoline, stove oil, diesel oil, furnace oil?

Mr. Thody: That is right.

A. They have, I believe—I would have to double check this—both grades of motor gasoline and certain grades of the gas oils, but I can't state definitely.

Q. Are there any lubricating oils?

A. No, sir.

Q. Will you address your remarks now, Mr. Olaine, to Distributive Area No. 6 as referred to in Exhibit A-1 for identification; do you know what arrangements have been made by Standard Oil Company of California with the Standard Oil Company of Texas for the supply of bulk goods for Distributive Area No. 6?

A. We are informed as to the volume that is available to us at El Paso and we gauge our distribution accordingly. [fol. 1727] We don't enter into the arrangements as to the volume that is to be available there at El Paso. We are told as to what is going to be available to us, but we gear our distribution accordingly.

Q. Is that a fixed amount quarterly or annually or——

A. Well, it is a fixed amount, but it may vary from month to month or quarter to quarter. That depends on their production activities at El Paso.

Q. Do you know what determines that other than——

A. (Interposing) No, I don't. No.

Q. Will the demand of the various bulk plant operators in the bulk plants located in Distributive Area No. 6 have any relationship to that volume?

Mr. Hall: He said already he doesn't know, Mr. Thody, what does regulate that amount that is available. I don't object to you asking him questions within his province. I don't think he should be called upon to speculate.

Mr. Thody:

Q. Is it within your knowledge that Standard of Texas is able to supply all of your needs?

A. No, I am sorry, I couldn't say as to that.

Q. Do you know whether or not the supply arrangement with respect to Area No. 6 is worked out pursuant to a contract?

A. No, I am not familiar with that.

Q. Are the tank cars referred to in your discussion of [fol. 1728] Area No. 6 tank cars under the jurisdiction and control of Standard of California?

A. Yes, sir.

Q. And is the same situation true with respect to fuel trucks?

A. Yes, sir.

Q. Do you have any knowledge as to a schedule of de-

liveries made from the El Paso refinery to the bulk plants in Area No. 6?

Mr. Hall: That is not clear to me.

Mr. Thody: Strike the question.

Q. Are tank cars loaded regularly from the El Paso refinery to supply the bulk plants?

A. Yes, sir.

Q. How many days per week?

A. Well, I can't definitely state. The tank cars are loaded every working day, but—well, I just can't make that definite statement. The shipments are regularly made from El Paso into District No. 6.

Q. What do you mean by "regularly made"?

A. Well, these stations have their instructions to place their orders for bulk products on the El Paso refinery, and the El Paso refinery has instructions from us to supply these stations. So, depending on the volume of the orders going in there will indicate how much is being shipped from [fol. 1729] the El Paso refinery.

Mr. Hall: In referring to—may I ask the witness this?

Mr. Thody: Yes.

Mr. Hall: In referring to "stations", do you mean "bulk plants"?

A. Bulk plants, pardon me.

Mr. Thody:

Q. Are there any instructions to the bulk plants that they should place their orders on regular intervals, on a weekly basis, on a monthly basis, or pursuant to any set period?

A. The bulk plants have instructions to place their orders for bulk stocks on the El Paso refinery as they require replenishment of bulk stocks.

Q. Is it customary not only with respect to bulk plant operators, generally, that they place orders for replenishment of bulk goods when their supplies reach any, their reserves reach any particular level; that is, is it customary for them to wait until they are half empty or third empty or quarter empty?

A. Well, I can't say that there are any specific instructions as to exactly when they are to place their orders in

relation to the inventory that they have on hand in their tanks. That will be governed by their volume that is moving through those tanks which will vary from time to time, and——

Q. Is there any recognized established dealing in the [fol. 1730] industry with respect to replenishing their reserves after it reaches a particular level?

A. I can't say as to that. That will be governed to some extent on the location of the bulk plant and the length of time that it takes their bulk stocks to come from their supply source or refinery source.

Q. Insofar as Area No. 6 is concerned, do I understand your testimony here again to be that you have no knowledge as to the distribution methods employed after the bulk plant?

A. That is correct. Until the stock arrives at the bulk plant only.

Q. I should like now to direct your attention, Mr. Olaine, to the third category of your breakdown on Exhibit A-1 for Identification entitled "Bulk Distributive Areas Supply by Distribution Terminals of the Standard Oil Company of California." You have referred there, Mr. Olaine, to distribution terminals. What do you mean by that designation?

A. Those are terminals that receive bulk products from the refineries by barge and/or tanker and have facilities to receive these products, store them, and reship them by tank car and/or tank trucks to bulk plants.

Q. Well, how is the gasoline distributed from the distribution terminals to these bulk plants? Is there any general way or does that vary?

Mr. Hall: Pardon me, just a moment, Mr. Thody. Doesn't [fol. 1731] that appear from Exhibit A-1 for Identification?

Mr. Thody: I think that only refers to the distribution terminals, or is this—off the record.

(Discussion off the record.)

Q. Mr. Olaine, I refer you to your—the third category under Exhibit A-1 and ask—and specifically as to Distributive Area No. 8—Distributive Area No. 8 you have indicated is supplied by tank trucks from Moss Landing. What do you mean by that statement?

A. I mean, the bulk plants in Distributive Area No. 8 are supplied.

Q. Are supplied from the distribution terminal?

A. At Moss Landing.

Q. At Moss Landing?

A. Yes, sir.

Q. Thank you. In your discussion of the other distributive areas under this category, namely, Distributive Areas Nos. 7 to 23, inclusively, do you indicate that the gasoline is supplied from the refinery to the particular distribution terminals referred to under the discussion of each of those areas and then in turn supplied by each or by such distributive area to bulk plants?

A. Disfribution terminals to bulk plants by tank trucks and/or tank cars in the respective distributive areas.

Q. In some instances you have discussed transportation [fol. 1732] by tanker. I refer specifically to your discussion, "Distributive Area No. 20" in Exhibit A-1. Point Wells, I assume, is the distributive area—is the distributive center or distributive terminal?

A. Yes, sir.

Q. And that particular distribution terminal is supplied by barge from the refinery, is that correct?

A. It is supplied by tanker from the refinery.

Q. No—or barge.

A. Well, the area—the bulk plants in Area No. 20 are supplied from Point Wells by tank cars, tank trucks and/or barges from Point Wells, but——

Q. By that you mean the terminal plants—the bulk plants.

A. Are supplied, but Point Wells is supplied by tanker from Richmond and/or El Segundo.

Q. Are those tankers operated by Standard?

A. Yes, sir.

Q. Referring generally, Mr. Olaine, to the general distribution of bulk products throughout the area indicated or area set forth by you in your Exhibit A for Identification, do you have any—to your knowledge do you know *fo* the number of tank trucks either owned, operated, or leased by you?

A. No, sir, I do not.

Q. Do you know of the number of tankers used by you in [fol. 1733] your general distribution in this area?

A. No, sir, I do not.

Q. Is there a fleet of tankers used exclusively for coastal distribution?

A. In your tanker fleet there are various tankers that are used in supplying these various bulk terminals up and down the Pacific Coast.

Q. They are used exclusively for that distribution—strike that.

Mr. Hall: Pardon me—off the record.

(Discussion off the record.)

Mr. Thody:

Q. Can you state, Mr. Olaine, approximately how many tankers are used constantly for distribution of bulk products in the Pacific Coastal trade for the United States markets?

Mr. Hall: You mean, say, during the year 1946, or something like that, because—?

Mr. Thody: Continuously.

Mr. Hall: It differed during—the situation was entirely different during the war, you know.

Mr. Thody: Presently used.

Mr. Hall: Well, I don't want him to state presently. This case takes only up to '46. Well, that is all right. You can answer the question.

A. No, I cannot. I am not in a position to answer that [fol. 1734] question specifically, because I don't know just how many tankers are in that particular trade.

Mr. Thody:

Q. In the area referred, covered by Exhibit A, do you know of the total number of bulk plants used for the distribution of bulk products?

Mr. Hall: Well, pardon me. That would be a counting of all the dots on Exhibit A, wouldn't it? I have no objection.

A. Offhand I can't answer that question, because——

Mr. Thody:

Q. If we were to count the dots on this map, would that give us an accurate portrayal of the number of bulk plants?

A. No, sir. There may be some points on there where plants have been closed, and I did notice one there—in connection with war activities there was some Camp so-and-so indicated there. We may have had temporarily a plant, but it has now been closed.

Q. Was this accurate as of July 1947, at the time of its preparation.

A. Well, I don't know the exact reason for the preparation of that particular map at that time. So, I can't say that that accurately portrays the number of bulk plants that we have under discussion here.

Q. This is substantially accurate, your would say, with the minor exceptions that you have referred to?

A. Yes, I would say that is substantially accurate, [fol. 1735] but——

Mr. Hall: And the map you have been referring to in the last preceding questions and answer is, of course, Exhibit A for Identification, is that correct?

Mr. Thody: That is correct.

A. Yes.

Q. I direct your attention now, Mr. Olaine, to the map prepared by you and marked for identification Plaintiff's Exhibit B, and the statement prepared by you and previously identified by you as Exhibit B-1. Mr. Olaine, what goods are embraced in your designation "Package Goods Distribution" as referred to in Exhibit B-1 for Identification?

A. Well, they would be the products that these bulk plants do not have in bulk storage and therefore must receive these particular products in what we refer to as package form, that is, in iron barrels or cans and cases or other types of containers.

Q. What are those products?

A. Well, they could be at some one—at an individual bulk plant, for example, that does not have a sufficient volume of one grade of motor gasoline business to warrant a bulk tank, it could receive that particular product in iron barrels.

Q. What is the product—what are the products?

A. That would vary from bulk plant to bulk plant. I [fol. 1736] mean, I couldn't give you a list of products.

Q. Of those package goods, which types are normally sold through service station dealer outlets?

A. I am not in position to answer that one.

Q. Is RPM can oil generally known as a package goods?

A. It is generally known as a package goods.

Mr. Thody: Off the record.

(Discussion off the record.)

Q. Do you have a breakdown of the types of products covered under the term "package goods"? Are lubricating oils considered package goods?

A. Generally speaking, they are considered package goods. The only places where they would not be considered package goods would be a few exceptionally large bulk plants where there is sufficient business to warrant that these bulk plants receive lubricating oils by tank cars and/or tank trucks.

[fol. 1737] A. Are lubricating oils packaged in large drum containers considered package goods?

A. Large drum containers? I presume——

Q. Twenty gallon or forty-two gallon.

A. Fifty-three gallon barrels are, generally speaking, the general size of the lubricating barrels.

Q. Is there any fixed limit on what is a package goods; for instance, is over fifty-three gallons considered bulk and under fifty-three gallons considered package goods?

A. Well, under fifty-three gallons would be the barrels and the cans and the smaller types of containers. But containers that would be over fifty-three gallons, I'm not familiar with that.

Q. Well, under fifty-three, is that considered package goods?

A. That would be considered package goods, yes, sir.

Q. I refer you, Mr. Olaine, to the first group in Plaintiffs' Exhibit B-1 for identification entitled "Package Goods—Supplied by California Refineries—." Is there a packaging plant at Richmond refinery?

A. Yes, sir.

Q. Is there another packaging plant at the El Segundo refinery?

A. El Segundo?

Q. El Segundo refinery.

[fol. 1738] A. Yes, sir.

Q. Do they package lubricating oils?

A. Yes, sir.

Q. And greases?

A. Yes, sir.

Mr. Hall: Where are you referring to now?

Mr. Thody: The first group.

Mr. Hall: Both Richmond and El Segundo?

Mr. Thody: Yes.

Mr. Hall: Your last two questions weren't clear as to whether you were talking about El Segundo or Richmond. Were you talking about both?

Mr. Thody: I was talking about both.

Q. Do they package at Richmond?

A. They package both the lubricating oils and greases at Richmond, and the lubricating oils at El Segundo, and I am not too certain as to the greases at El Segundo. That is something I cannot make a definite statement on.

Q. Now, on Distributive Area No. A—I am referring to Exhibit B for Identification—you state that this area is supplied by box cars or package trucks from the Richmond refinery. What are the destinations of those shipments from the Richmond refinery? Do they go directly to the bulk plant operators?

A. Yes, sir. They go directly to the bulk plants.

[fol. 1739] Q. Are shipments made pursuant to orders placed by those bulk plant operators?

A. The orders are placed by the bulk plants.

Q. Are box cars loaded daily at the Richmond refinery for package goods for shipment into Area A?

A. They are loaded during the regular working week, and I presume that there is enough business in the way of package goods to say definitely they are loaded daily. But there could be days when no package cars might be shipped.

Q. Are package goods of this character ever sent to the accessory warehouses in this area?

A. I cannot answer that. I am not familiar with that phase of it.

Q. You do not know whether the bulk plant operators——

Mr. Hall: Off the record.

(Discussion off the record.)

Mr. Thody:

Q. Coming to Distributive Area No. B in Exhibit B-1 for Identification, do I understand from your previous

statement that all types of lubricating oils, with the exception of minor greases are packaged at El Segundo refinery?

Mr. Hall: Well, I think his previous statement was that he was uncertain about the packaging of greases at El Segundo. So, I don't think—I think the question should be reframed.

[fol. 1740] A. May I ask this, too? I would like to qualify that. When you said all brands or all grades of lubricating oil, there may be some particular types of lubricating oil that may not be filled at the El Segundo refinery. I am not qualified to say definitely on every one of the lubricating oils.

Mr. Thody:

Q. Do you know what types are packaged at El Segundo?
A. No, sir, I do not.

Mr. Hall: You mean, types of lubricating oil?
Mr. Thody: Types of lubricating oil.

A. No, I do not.

Q. Are shipments made from the El Segundo refinery of lubricating oils to all of the bulk plants within Distributive Area No. B, as reflected by Exhibit B for identification, from the El Segundo packaging plant?

A. Yes. There may be a few of the bulk plants that do not have warehouses and do not handle package goods. They only handle bulk stocks. There are a few of those scattered through our entire area as shown on this exhibit.

Mr. Hall: Exhibit B?

A. Exhibit B.

Mr. Thody:

Q. Are all the dots indicated on Exhibit B in Marketing Area or Distributive Area B designations for bulk plants?
[fol. 1741] A. Yes, sir.

Q. Is this an accurate designation of such bulk plants; have there been any changes since you——?

A. There may have been some changes and some of those plants may have closed down; there may have been some, a few, where a new plant opened.

Q. But this is substantially accurate?
A. This is substantially accurate, yes, sir.

Q. Coming up to Distributive Area No. C, as referred to in Exhibit B-1 and as represented by Exhibit B, is there a packaging plant located at Willbridge—

A. (Interposing) Certain of the——,

Q. —or is that just a distribution terminal?

A. That is a terminal and they fill certain of their bulk products in packages. Certain bulk products are filled in iron barrels and shipped out with other package goods to these bulk plants in Distributive Area C.

Q. What is the source of the products from—what is the source of the products at Willbridge—the source of the merchandise?

A. The bulk products are received at Willbridge by tanker from the refineries and then at the Willbridge terminal they are filled into iron barrels. Now,——

Q Of all sizes?

A. No. Just into iron barrels.

[fol. 1742] Q. What size?

A. Well, generally they are fifty-three gallon barrels, fifty-two gallon or fifty-five gallon barrels.

Q. Is there any smaller packaging done at Willbridge?

A. No, they do not do any of the small packaging at Willbridge. The small package goods for Willbridge and also used by Willbridge for redistribution to these bulk plants in Distributive Area C are received from Richmond in box car lots.

Q. Are they sent directly from Willbridge to the bulk plant location? Directly to the bulk plant locations shown in Distributive Area C?

A. Yes, sir.

Q. I refer your attention to Distributive Area D, as indicated in Exhibit B-1 and as reflected by Exhibit B. Will you explain the nature of the operation conducted at Point Wells?

A. Bulk products are transported from the refineries by tanker to Point Wells, and at Point Wells they have facilities for filling iron barrels of these various bulk products; and with regard to the lubricating oils, they have a lube blending plant there which receives the bulk stocks from the refinery by tanker. These are base lubricating oils and they are blended there in the lube blending plant, and various grades of luricating oils are made at Point Wells and [fol. 1743] they are also packaged at Point Wells.

Q. Is all the packaging at Point Wells—strike that.

A. Possibly I could clarify that.

Q. Just a second. Are the lubricating oils received from the refinery by barge kept separate from the lubricating oils which are blended?

A. The lubricating oils are received from the refinery by tanker rather than by barge, as you just mentioned, and these are base lubricating oil stocks and are segregated at Point Wells and then put in their mixing packaging operation up there and placed into barrels and other packages. Now, other package stocks are also received directly from Richmond in box car lots at Point Wells, greases and various other package stocks that are only manufactured at Richmond, and these are warehoused at Point Wells and then are sent out to these bulk plants in Distributive Area D along with packages that are packaged at Point Wells from bulk products at that point and lubricating oils at that point.

Q. Is there any particular size container—strike that. Are all sizes of packaging—is the packaging performed at Point Wells done in all types of containers or is just a certain limited size?

A. I cannot answer that question, because I am not familiar with the entire packaging setup with respect to [fol. 1744] lubricating oil packaging done at that point and I don't know that it applies on all grades of lubricating oils referred in Distribute Area D. Certain of the lubricating oils no doubt come from Richmond in box car lots in packages.

Q. When you refer to box car lots, does that mean large containers or——

A. No, I mean barrels or in smaller containers than barrels which are in boxes or cases, or, that is, cans and other smaller types of containers.

Q. Directing your attention now, Mr. Olaine, to the small lubricating RPM containers as used in automobiles, small quart containers, do you know where the packaging of that small goods is performed?

A. No, I cannot state that that is performed at Point Wells. I don't know to the extent that that lube blending plant has been completed for its packaging operations.

Q. Point Wells does package small containers, small RPM containers?

A. Well, I can't definitely state that. I know they

package the barrels and I believe they handle the smaller containers but I cannot state definitely on that.

Q. Do you know whether or not Willbridge packages small containers?

A. Definitely not. Willbridge does not.

Q. Do you know whether or not Richmond packages small [fol. 1745] containers?

A. Yes, sir, Richmond does.

Q. On these box car lots which emanate from the Richmond refinery to Point Wells by tanker—is that what it is, tanker box car lots, too?

A. No. They go by rail.

Q. By rail?

A. Yes.

Q. Does that also include small RPM containers?

A. It would include the small RPM containers if Point Wells does not handle that type of packaging. That is what I am not clear on. If they do, they would not be shipped from Richmond. They could come up from Richmond by tanker in the base stocks and the lube blending plant would handle the packaging in the small container. I am not certain about the small containers. I am not familiar with that detail of the operation with that lube blending plant at Point Wells.

Q. You state, Mr. Olaine, you are employed in the Distribution Division?

A. Distribution Department.

Q. Distribution Department of Standard Oil of California?

A. Yes, sir.

Q. Could you tell me approximately how many personnel are employed in that division?

[fol. 1746] Mr. Hall: In that department, you mean?

Mr. Thody: In that department.

A. I believe at the present time there are twenty-nine. I are not absolutely certain as to that exact number.

Q. What is the area covered by—the area of distribution covered by the Department? Do you handle international shipments, distribution of international shipments or solely domestic shipments that you are concerned with?

A. We are concerned with domestic shipments. We do

not handle the distribution on international—or foreign shipments, I presume? We have a Foreign Trade Department that handles that foreign trade phase of it.

Q. The states indicated in Exhibit A, that covers the total area of your distribution?

A. No, it does not cover the total area. We handle the distribution of the entire area in that exhibit.

Q. In addition what other area?

A. The Territory of Alaska, and Hawaii, is a part of our domestic distribution.

Q. The principal function of the Department is the distribution of bulk goods from the refiners to the bulk plants?

Mr. Hall: No. That is not what he said, Mr. Thody.

Mr. Thody:

Q. What is its principal function?

A. The distribution of petroleum products in the quan- [fol. 1747] tities desired and at the points desired from our refineries and other sources of supply, and at the lowest practicable distribution cost. Now, that would cover bulk products and package products.

Q. Does the function of the Department cease at the bulk plant level?

A. Yes, sir. We arrange to see that the bulk products and the package products get to the bulk plants, and that is the extent of our jurisdiction.

Q. What department would handle the distribution after, from the bulk plant level to the consumer level?

A. That would be the Marketing Department.

Q. Are there any peculiar problems of the Standard Stations, Inc., aside from the Standard of California, which you would handle?

A. We have in our distribution activities—we don't handle the distribution with respect to the Standard Stations. That is all beyond the bulk plant. Our own operations take up to this bulk plant and from there on out it is Marketing.

Q. Do you have any figures on the overall capacity of all of the bulk plants?

A. No, sir, I do not.

Mr. Thody: Off the record.

Mr. Hall: Is that all with this witness?

Mr. Thody: Yes.

[fol. 1748] Cross-examination.

Mr. Hall:

Q. It is true, is it not, Mr. Olaine, that the Distribution Department is responsible for the efficient and economical overall distribution of the Company's petroleum products, both bulk and package?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And to that end it is the duty of the department, is it not, to see that supplies of products will be placed economically where and when they are needed for ultimate distribution?

A. Yes, sir.

Q. It is true, is it not, that Standard Oil Company of California has no refineries outside the State of California—none that you know of?

A. Yes, sir, that is true.

Q. That is true?

A. That is correct.

Q. The only refineries that Standard Oil Company of California has are located in the State of California?

A. Yes, sir.

Q. And those refineries are located at Richmond, Bakersfield, and El Segundo?

A. Yes, sir.

[fol. 1749] Q. No, in preparing the maps which have been marked Plaintiff's Exhibits A and B for Identification you had in mind a distinction between bulk and package goods, did you not?

A. Yes, sir.

Q. Now, take the map which is marked Plaintiff's Exhibit A for Identification. Will you tell us what the bulk ones are, the transit of which that map was designed to illustrate.

A. The products?

Q. The bulk products.

A. The bulk products—the names of the particular bulk products?

Q. Which that map was designed to illustrate the transit of.

A. Well, that covers Chevron Gasoline, Standard Diesel Fuel, Standard Furnace Oil, and Standard Stove Oil.

Q. There is a further qualification with respect to that map, is there not; namely, that it was designed to show the transit of those products in a fluid state by either tanker or barge or tank car or truck and trailer?

A. Yes, sir.

Q. It was not designed, was it, to show the transit of lubricating oil in drums, was it?

A. No, sir.

[fol. 1750] Q. When one of the fluids that you have described is put in some kind of a container, like a drum, then it becomes package goods, the transit of which is designed to be illustrated by the map which is marked Plaintiff's Exhibit B for Identification?

A. Yes, sir.

Q. Is that right?

A. That is correct.

Q. Now, directing your attention to package goods for a moment and directing your attention to the point on Exhibit B for Identification which is marked "Willbridge" near the City of Portland in Oregon, from what source does Willbridge get the package goods which are sent out to the bulk plants from Willbridge?

A. Certain of the products move by tanker from the refineries to Willbridge, and they are packaged at Willbridge, and other package goods are received by Willbridge by box car lots.

Q. I see. Now, the stock that comes to Willbridge from a refinery by water would come from both Richmond and El Segundo, or just Richmond?

A. No, it would be Richmond and El Segundo.

Q. Now, directing your attention to Point Wells, which is near Seattle and is shown on the map which is Exhibit B for Identification, will you tell us again the source of the package goods that are sent out to the bulk plants from [fol. 1751] Point Wells?

A. Certain of the products are received from the refineries by tankers and are filled in containers at Point Wells, and other package goods are received from Richmond in box car lots.

Q. Do any of the package goods go to either Willbridge or Point Wells in box cars from El Segundo?

A. No, sir, not to my knowledge.

Q. Do any of the package goods to Willbridge or Point Wells go to those points from the refinery at Bakersfield?

A. No, sir. There are no shipments of package goods out of Bakersfield refinery. They have no packaging facilities at that point.

Q. Is it true that commodities that come to Point Wells and are there packaged, which you have described as coming from the refineries, would come from both El Segundo and Richmond?

A. Yes, sir.

Mr. Hall: That is all.

Mr. Thody: That is all, Mr. Olaine.

(Signed) Francis S. Olaine.

[fol. 1752] 9:00 O'clock A. M., March 10, 1948, 1712 Standard Oil Bldg., San Francisco, California

L. M. Bussert, a witness called on behalf of the plaintiffs, being first duly cautioned and sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

Mr. Thody:

Q. Will you state your full name for the record?

A. Leonardo Money Bussert.

Q. What position do you occupy with Standard Oil of California?

A. Manager, Operations Department, Marketing.

Q. How long have you held this position? Under this specific title.

A. Four days.

Q. In what capacity——

A. (Interposing) Prior to that Assistant General Manager, Marketing Operations.

Q. Previous to that?

A. Well, that position was held for four years, that title.

Mr. Thody: Off the record.

[fol. 1753] (Discussion off the record.)

Q. How long have you been associated with the Company?

A. Thirty and a half years.

Q. In what capacities?

A. Various capacities, from the present backwards, being Assistant District Manager, Assistant District Sales Manager, Superintendent of Sales, Special Agent.

Q. That is sufficient. Could you tell us what the function of the Marketing Division is or the Marketing Department?

A. Could I go off the record for an explanation, first?

(Off the record.)

A. As I understand it, the function of the Marketing Department is to market or take to the points of retailer and consumer usage the products to be offered for sale.

Q. Does the Marketing Department have various component divisions?

A. It does.

Q. Could you name some of them?

A. Wholesale Division, Retail, Standard Stations, Operations.

Q. Could you tell me what the function of the Operations Division is within the Marketing Department?

A. To supervise functionally all bulk plants and directly [fol. 1754] certain other bulk plants; supervise functionally certain accessory warehouses and directly operate other warehouses; to operate directly certain terminal operations and functionally supervise others; to take care of the required engineering pertaining to the Marketing Department's operations; to take care of the classification of labor; to establish proper wage scales.

Q. That is sufficient. We are primarily interested here in distribution, marketing problems, rather than engineering problems. Approximately how many people are employed in the Marketing Department?

A. Something over 3,000.

Q. And approximately how many people are employed in the Operations Division?

A. Well, just generally speaking, 500 in Operations.

Q. Do those 500 people operate out of San Francisco, or are you decentralized?

A. We are decentralized.

Q. Do you have divisions, or is the area broken down, the Marketing Area for Standard, broken down geographically or functionally?

Mr. Hall: Just a minute, let me have that question back.

(The record was read.)

Mr. Hall: That still isn't clear to me. Maybe it is to the witness. Are you talking about the whole company or the Marketing Department or the Operations Division of the [fol. 1755] Marketing Department?

Mr. Thody: I will rephrase the question.

Q. Is the Operations Division—you say it is decentralized—is it divided to handle problems, to handle its assignment on a geographical basis or is it decentralized functionally? Do I make myself clear?

A. No, sir, you do not.

Q. Administratively how is the Operations Division set up?

A. It is set up into areas so that supervision can be given adequately and competently to an area that is best served from a certain location. I'd call it geographically and functionally, both.

Q. Do you have the personnel assigned through the territory, the Marketing Area, covered by Standard Oil or covered by the Operations Division?

A. I do not understand your question.

Q. Well, for the various localities you say you have this broken up?

A. Yes.

Q. Do you have men assigned in charge of a particular area—are you broken down into districts?

A. Yes.

Q. Into zones?

A. Yes.

[fol. 1756] Q. Could you describe just briefly how that is broken up; what is it, on a state basis?

A. It is not on a state basis. It is on areas considered the easiest for supervision from the central location.

Q. How many such areas do you have for supervisory purpose?

A. I think it is divided differently for Operations than it is for Sales. Which do you wish?

Q. For Operations.

A. Eleven areas.

Mr. Hall: How many was that?

A. Eleven.

Mr. Thody:

Q. Could you describe briefly the administrative setup for each or for a single area? Do you have an area manager?

A. With respect to San Francisco and operations there, we have a superintendent whose headquarters are in Oakland. He has suitable assistants on the staff. They are responsible for the direct operation of two loading racks and one plant in Oakland, one plant in San Francisco, and functionally responsible for the engineering and operations of an area from King City to the Oregon line, from the Pacific Ocean to a meandering line, generally speaking, coming down about 150 miles east of the Ocean.

[fol. 1757] Q. Is that a typical setup for each of the eleven districts?

A. There is no typical setup. They are divided in areas consistent with the best administration.

Q. And the problems with respect to each area would be peculiar to that?

A. Yes, sir.

Q. When you say the Operations Division is charged with the functional distribution—or functional marketing——

A. Function operations.

Q. —functional operations——

A. Of the engineering.

Q. —does that refer to marketing or is that——

A. To marketing only.

Q. Could you describe what you mean by the functional operation?

A. In addition to the previous organization there are two managers within the area served by this operational office. They are primarily interested in the sales of products. All plants except those previously mentioned are under their personal direction. When they want repairs to the plants

or to facilities of the Company, they make a request on the operational superintendent that he do such repairs.

Q. When you refer to "plants", you mean the bulk [fol. 1758] plants?

A. I do.

Q. Do you have any figures on the total number of bulk plants?

A. Exactly, no, but it is something in the order of 700.

Q. 700?

A. Scattered in the seven Western States, Alaska, Hawaii, and the Mid-Pacific area.

Q. Does that 700 include that outside——

A. Yes.

Q. How many of the 700?

Mr. Hall: Let the witness answer.

Mr Thody: I'll finish the question.

Q. Does the 700 figure include also the bulk plants located outside of the confines of the United States, those located within the territory?

A. Yes.

Q. Approximately how many of that 700 are located outside of the United States?

Mr. Hall: You mean, Continental United States?

Mr. Thody: Continental United States.

Mr. Hall: Just a minute; is this Continental in your phraseology Alaska, which is the northern part of the Continent, or is Alaska, Honolulu, Hawaii, considered Con- [fol. 1759] tinental? Why don't you reframe your question?

Mr. Thory:

Q. How many are located in Alaska, Hawaii, and Mid-Pacific?

A. About 28 in Alaska, 16 or 18 in Hawaiian Islands, and three other points in the Pacific. I might mention the three in the Mid-Pacific are not owned by the Company. They are only operated.

Q. Is there—those bulk plants located within the Continental United States, is there any classification made by you as to size?

Mr. Hall: Just a minute, please. Speaking of Continental United States, are you including Alaska?

Mr. Thody: Yes, including Alaska.

Q. Of the remaining 651 within the seven states enumerated by you is there any classification as to size of those bulk plants?

A. No. In the sense that they are graded one to the other with respect to size, you mean? Is that what you are after?

Q. Do you have large bulk plants and small bulk plants located in those seven states?

A. We do.

Q. In the industry and in your experience what is the capacity of what you consider a large bulk plant?

A. Capacity meaning what?

[fol. 1760] Q. The storage capacity.

Mr. Hall: You mean, storage capacity for bulk products?

Mr. Thody: For bulk products.

A. Would you restate your original question again?

Mr. Thody: Will you read it, please?

(The record was read.)

A. We have one over a million and a third barrels of storage, which is large.

Q. And what would be the capacity of some of your smaller?

A. 800, 1200, 1600 barrels bulk storage.

Q. For the purposes of the record, what is a barrel?

A. 42 gallons.

Q. The bulk plants located within the seven states which you have referred to, are all of these owned by Standard Oil?

A. Yes.

Q. Are they all operated by Standard Oil?

A. No.

Q. Could you describe the various methods of operation of these bulk plants?

A. Company operation and wholesale distributor operation.

Q. Could you differentiate the two types?

A. The company operation is conducted entirely by personnel on Company payroll.

[fol. 1761] Mr. Hall: Pardon me a moment. You mentioned the word "Standard." You referred, of course, to Standard Oil Company of California, did you not?

Mr. Thody: That is correct. Would you read the question and answer?

(The record was read.)

A. Wholesale distributor plants are operated by an individual appointed to operate that plant wherein he supplies all labor. Title to the plant remains with the company.

Q. Are any bulk plants owned by Standard Stations, Inc.?

A. No.

Q. Approximately how many of the bulk plants located within the seven states are Company operated?

A. I haven't looked at the records for some time, and the answer is completely a guess—probably 200 to 250.

Q. Then the remaining portion would be wholesale?

A. Distributor.

Q. Wholesale distributor?

A. Yes.

Q. Of the latter type, the wholesale distributors, are there various ways of operating those plants or do they all fit into the common pattern?

A. They fit into a common pattern.

[fol. 1762] Q. And the wholesale operator——

Mr. Hall: Wholesale distributor.

Mr. Thody:

Q. —wholesale distributor, you indicated that title to the physical properties belongs to the company?

A. Yes, sir.

Q. Who owns the gasoline?

A. The Company.

Q. The Company. How is the gasoline furnished to such wholesale distributors, on a consignment basis?

A. No, sir. Title remains with the Company.

Q. Could you describe to us what the function of each of these bulks plants is?

A. To receive and store bulk and package petroleum merchandise, warehouse same, which is then redistributed to its ultimate consumer or proximate ultimate consumer from those plants.

Q. Can you describe how the bulk goods are redistributed from the bulk plants to the ultimate consumer?

A. By means of bulk tank trucks, iron barrels, and customers who may call at the plant to have their containers filled or they picking up petroleum merchandise which is not bulk.

Q. What types of bulk products are handled from bulk plants?

[fol. 1763] A. Small and large, are you speaking about?

Q. I am referring to products, gasoline, lubricating oils.

A. Gasolines, kerosenes, thinners, solvents, gas oils, heating oils——

Q. Which of such products——

Mr. Hall: Wait a minute; let him finish.

Mr. Thody:

Q. Is that all?

A. —and in some exceptional cases, other products that might be stored in the bulk, exceptional meaning only in the sense that a demand for that particular product is such that it would be handled in bulk.

Mr. Hall: Did your question call simply for bulk products?

Mr. Thody: Yes.

Q. Are there other products other than bulk products, that are marketed through the bulk plants?

A. Yes.

Mr. Hall: Wait a minute; that calls for the conclusion of the witness. You said marketed through—it is my understanding that the bulk plants do not market anything.

Mr. Thody:

Q. That are redistributed from the bulk plants.

A. As previous indicated, petroleum merchandise—products.

[fol. 1764] Q. Do you mean in addition to those products—do you mean there are products in addition to those enumerated by you in your previous answer—are there other products other than the ones that you have listed?

A. Yes, sir.

Q. What are they?

A. Petroleum merchandise which is in the category that we call greases and lubricants.

Q. Is there any general classification for those?

A. I have given it. Petroleum merchandise.

Q. Would the term "package goods"?

A. Synonymous to a large degree.

Q. Which of these products that you have just listed are redistributed ultimately to service stations?

A. Gasolines, thinners, solvents, kerosenes, diesel oils, and petroleum merchandise.

Q. What is the manner in which bulk products and petroleum products are redistributed from the bulk plants to the ultimate consumers?

A. I previously answered that. Repeating——

Q. (Interposing:) I do not mean—your answer referred to truck, iron barrels, and so on. Are they distributed directly to service stations from bulk plants or is there some intermediate step?

A. Directly to them.

[fol. 1765] Q. Directly to service stations?

A. Yes, sir.

Q. What service stations do you supply from bulk plants? Do you supply service stations of all types? May anyone place an order?

A. We deliver to Standard Stations, Chevron dealers, and other accounts regularly handling our merchandise.

Q. May other accounts——

A. (Interposing:) —and to such other orders as may come to us.

Q. On the other accounts referred to in your previous answer, can you indicate to us the type of accounts you refer to?

A. Agricultural, industrial, commercial and private.

Q. Are those orders placed pursuant to a contract, or——

A. (Interposing:) No, sir.

Q. —or would they be spot sales.

A. Usually spot sales.

Q. May anyone come to a bulk plant and purchase—any service station come to a bulk plant and purchase its requirements of the products normally sold by you to service stations?

A. Limited. The service station not handling our gaso-

lines would not come to us for gasoline because he would not have the designation of the gasoline that he purchased [fol. 1766] from us on his pumps. So, he could not resell it under the State law without having some designation on his pumps as having that brand of product in them. He could come and get thinners if he wanted.

Q. Are the bulk plant operators accountable to any particular person within the Marketing Department?

A. They are to a branch manager who is their supervisor.

Q. Is the branch organization you refer to the same type of organization you referred to in your earlier testimony with respect to the eleven districts?

A. No. It is a subsidiary supervisory force under the district manager.

Q. You have mentioned both branch managers and district managers. How many district managers are there?

A. 14.

Q. 14?

A. Yes.

Q. Are these marketing districts?

A. Yes, sir.

Mr. Hall: Did you confine that question to Continental United States?

Mr. Thody: The seven states.

A. The seven states—13 then.

Q. These are marketing districts?

[fol. 1767] A. Yes, sir, in our nomenclature.

Q. Are they synonymous with the sales districts?

A. I thought that is what you meant by marketing.

Q. Is the word marketing district and sales district synonymous, the designation—the Company's designation?

A. We do not districtize the field. We have areas for which they supervise, but it is not put out as an absolute district; and we call them a sales district, but there is no specific delineation through rigid things that pertain constantly. They can be changed as conditions may require.

Mr. Thody: Off the record.

(Discussion off the record.)

Q. You indicate, Mr. Bussert, that these sales districts or marketing districts are broken down into various component branches?

A. Yes, sir.

Q. Is that correct?

A. Yes.

Q. Approximately how many branches are there in each sales district?

A. It varies in accordance with the size of the sales district, the supervision required.

Q. What is the largest number of branches in the 13 sales districts, approximately?

[fol. 1768] A. The answer is from memory and approximately 12.

Q. And approximately the smallest number of branches in a particular sales district?

A. 6.

Q. Now, as I understand your testimony, each of the bulk plant operators is accountable to a branch manager?

A. Yes, sir.

Q. Is the branch manager in turn accountable to some central officer or authority?

A. The district manager.

Q. For the activities of the bulk plant operations?

A. The district manager.

Q. And the district manager in turn would make reports concerning the operations of these bulk plants to whom?

A. To the centralized officials in San Francisco.

Q. In the Marketing Department?

A. In the Marketing Department.

Q. What division of them?

A. Pertaining to the subject at hand, either to the General Manager of Marketing Wholesale or Retail or to the Manager of Marketing Operations.

Q. Now, each individual bulk plant service a particular area within each branch, I suppose—is that correct?

A. Yes, sir.

[fol. 1769] Q. Is there any accepted number of accounts which each bulk plant will service or do they vary from bulk plant to bulk plant?

A. They vary.

Q. What determines the location of a bulk plant?

A. The density of business in an area that can best be served when it is sufficient to maintain bulk storage at a centralized location or an effective location.

Q. Do I understand from your testimony that the de-

mand placed upon the individual bulk plant would govern its location or relocation?

A. Plus the effects of transportation.

Q. You mean, Mr. Bussert, that the transportation problems would also be a factor in the location of the various bulk plants, is that correct?

A. Yes, sir.

Q. Who determines the area of supply for each bulk plant—would that be the branch manager?

A. Is "supply" the word you meant or distribution?

Q. The area of distribution for each bulk plant.

A. Surveys conducted by branch manager, district manager, and home office would determine the areas to be served.

Q. Would the branch manager be empowered to readjust a zone or an area of servicing of a particular bulk plant?

[fol. 1770] A. No, sir.

Q. Under whose authority would such a change be made?

A. Joint authority, usually vested in the manager of Operations.

Q. On the adjustment of the number of accounts to be supplied by a bulk plant, would that likewise have to ——

A. (Interposing) There is no adjustment made for the number of accounts.

Q. Is each bulk plant operator empowered with the authority to serve as many accounts in his geographical area as he may supply within the limits of his supply?

A. Yes.

Q. How are the orders placed with the bulk plants?

A. Mail form and personal contact.

Q. How are deliveries made? You have indicated by trucks, iron barrels and containers in your previous answer. Are those trucks owned by the bulk plant operator or by the—strike the question. Under whose authority are deliveries made from the bulk plant or by whom are deliveries made.

Mr. Hall: Now, there are two—I think you should reframe your question.

Mr. Thody: I am sorry. Strike it.

Q. How are deliveries made from the bulk plants?

[fol. 1771] A. As previously indicated, by trucks, iron barrels and containers.

Q. With respect to the trucks, which you have referred to in your previous answer, would they be the trucks of the bulk plant or the trucks of the dealer or recipient of the merchandise?

A. By it, and the wholesale distributor plant—by the trucks owned by the wholesale distributor.

Q. On the company operated bulk plants do they have a fleet of trucks which are part of it, which are owned by the Company and by—as a part of the bulk plant?

A. One or more as required.

Q. In your answer you have distinguished the delivery services for wholesale distributors. Do I understand your testimony to be that the trucks in those instances are owned by the individual appointed by the company to operate the bulk plant?

A. I did,—that is correct.

Q. What remuneration does the wholesale distributor receive?

A. Commission rates.

Q. Commission rates?

A. Applicable to the product delivered.

Q. Based upon, generally, on gallonage as far as gasoline and lubricating oils are concerned?

[fol. 1772] A. Yes, sir.

Q. With respect to the greases and other package goods, how would that commission——

A. (Interposing) By weight or unit.

Q. By weight or unit?

Mr. Hall: That isn't clear to me, Mr. Thody, whether you are referring to both the operators of the Company operated plants and to wholesale distributors in your previous question.

Mr. Thody: This question, I think the record will indicate, will refer solely to wholesale distributors who are individually appointed operators as distinguished from Company operated bulk plants.

Mr. Hall: You so understood, Mr. Bussert?

A. I did.

Mr. Thody: Is there any other distinction between the operators of the Company operated bulk plant and the wholesale distributor bulk plant which occurs to you as

being significant at this time insofar as the distribution of their products to the consumer are concerned?

A. No, sir.

Q. How are the orders from Chevron Stations placed with the bulk plant operators?

A. In the same manner as anybody else places an order.

[fol. 1773] Q. Are separate records maintained for Chevron Stations—for sales to Chevron Stations?

A. All records are maintained of the purchases individually by every person.

Q. Those records are maintained by the bulk plant operator?

A. Yes, sir.

Q. Are those records in turn transmitted, either to the district office or to the central office, or copies thereof, transmitted in such a manner?

A. Yes, sir.

Q. Which, copies or the originals?

A. Copies.

Q. To whom are they transmitted?

A. To the Company accounting officers for accounting purposes.

Q. In San Francisco?

A. No, in the district.

Q. In the district?

A. Yes.

Q. Are such records or compilations from such records in turn forwarded to San Francisco?

A. Summarizations of the records are transmitted.

Q. Which would indicate volumes for separate stations?

A. Yes, sir.

[fol. 1774] Q. Does the Operations Division or, to your knowledge, the Marketing Department negotiate the lease agreements and contract agreements with Chevron Stations?

A. Operations do not; Marketing, Wholesale, Retail, does.

Q. Marketing, Retail Department, does?

A. Yes.

Q. In negotiating a new Chevron contract or lease for a new Chevron station, does the retail branch confer with the Operations Division?

A. No, sir.

Q. That is made solely upon their own volition?

A. Yes, sir.

Q. What, then, is the relationship between the Chevron station and the bulk plant operator?

A. That of a customer.

Q. Are you acquainted with the types of agreements signed by the Chevron operators?

A. I am not.

Q. Do the Chevron operators look to the bulk plant operators for ready source of supply?

A. They do.

Q. Who determines whether the bulk plant operators have a ready source of supply?

A. Distribution clerk.

[fol. 1775] Q. When the supply in a bulk plant becomes dangerously low, what steps would be taken or are taken to correct such a situation?

A. Stocks are automatically—bulk stocks are automatically kept up to an operating level by the Distribution Department.

Q. Could you describe what you mean by an operating level?

A. To the best of our ability, not less than half a tankful is maintained at any time.

Q. Are orders for replenishment from the bulk plants placed by the operators themselves?

A. They are.

Q. Orders are received by them in response to their specific request for——

A. (Interposing) Yes,——

Mr. Hall: Just a minute; let the witness answer.

A. —they are advices as to the amount of product on hand. They are not orders. They are advices to the Distribution Department of the amount of stock that they have on hand, and the Distribution Department noting that automatically replaces the supply to keep it up.

Q. When are orders made? Are they made on a regular schedule?

A. Advice is sent once a week.

[fol. 1776] Q. On any particular day in the week?

A. It varies in certain sales districts so as to take advantage of load distribution at central supply points and make distribution.

Q. And then, as I understand your testimony, after the advice is received, then the orders—strike that. To whom are the advices sent by the individual bulk plant operator?

A. The centralized distribution offices.

Q. What is the relationship of the centralized distribution offices to the districts and branches you have previously referred to?

A. Solely for the matter of maintaining supply.

Q. Then actually the operator, the bulk operator merely advises of the supply on hand and based upon such information the merchandise is sent to him?

A. Yes, sir.

Q. Would you say that applies to all types of products which ultimately are used in service stations of the list you referred to—petroleum products?

A. Yes.

Q. In your previous testimony you referred to the fact that gasoline, kerosenes, thinners, and greases were ultimately used by service stations?

A. Yes.

[fol. 1777] Q. Then the supply of each of those products as maintained by the bulk plant operators is handled in similar manner with the use of advices?

A. Yes. That is, the supplies are maintained by means of advices to the Distribution Department of his stock on hand and his requirements.

Q. Now, are the requests—the orders of all Chevron stations handled in the same manner?

A. Identical.

Q. To your knowledge are there any Chevron stations who have not signed formal agreement with the Company?

A. I have no knowledge of that.

Q. Are you acquainted with the bulk plant operations in the State of Utah and in the southeastern portion of the State of Idaho?

A. To a limited degree.

Q. Are the operations of the bulk plants in those areas peculiar in any way insofar as redistribution of products generally is concerned?

A. Not to my knowledge any different from any other bulk plant.

Q. Are you acquainted with the operations of the bulk

plant operators in the eastern portion of the State of Arizona?

A. To the same degree that I am with all others:

[fol. 1778] Q. Is there anything peculiar insofar as the redistribution operations——

A. (Interposing) Not to my knowledge.

Q. —in that portion or in that area? With respect to the first area I have mentioned, in the State of Utah, and in the southwestern portion of Idaho, is there a ready source of supply for gasoline for the bulk plants?

A. Yes.

Mr. Thody: That is all.

(Discussion off the record.)

Mr. Thody:

Q. Mr. Bussert, are you acquainted with the packaging operations performed at Point Wells in the State of Washington?

A. I am.

Q. Will you briefly describe the products which are packaged at that operation?

A. Any products handled in bulk at that point will upon order be packaged into iron barrels.

Q. What is the size of iron barrels you refer to?

A. Approximately 53 gallons.

Q. Is there any packaging performed at that point for smaller goods; specifically, the RPM lubricating oil in quart cans?

A. There is not.

Q. Are there any other points, other than the Richmond [fol. 1779] packaging plant, which packages RPM in quart cans?

A. There are no points under the supervision of Marketing Operations Department that packages RPM in other than five gallon cans or iron barrels.

Q. Other than Richmond?

A. I specifically do not know the conditions at El Segundo. They may package them down there. You limit to Richmond, and I didn't know El Segundo.

Mr. Thody: That is all.

Cross-examination:

By Mr. Hall:

Q. It is a fact, is it not, Mr. Bussert, that there are very few bulk plants located outside of California but near the border of California that makes deliveries inside of California?

A. Yes, sir.

Q. And those bulk plants are located at Cave Junction, Oregon, Lakeview, Oregon, Reno, Nevada, Minden, Nevada, Tonopah, Nevada, Parker, Arizona, and Yuma, Arizona?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. What would be the proportion of the distribution from those seven bulk plants into California compared with the total distribution by the Marketing Department in California?

[fol. 1780] A. Practically infinitesimal. I would say a very small fraction of one per cent.

Q. It is true, is it not, that certain bulk plants located in California but near the borders of the State distribute products to small areas outside of California in other states?

A. Yes, sir.

Q. And those bulk plants are located at Crescent City, California, Cedarville, California, Litchfield, California, Tahoe City, California, Tallac, California, Laws, California, Shoshone, California, and Blythe, California; is that correct?

A. Yes, sir.

Q. What would be the proportion of products distributed from those eight bulk plants outside of California compared with the distribution of all bulk plants in California?

A. Likewise I would say that is an exceptionally small amount.

Q. Would you say that likewise was a fraction of one per cent?

A. I would. This is not from specific study, but I know as a fact that it is a very small portion of one per cent, or of a per cent.

[fol. 1781] Q. Well, you would say it is then a small fraction of one per cent, is that your answer?

A. Yes.

Q. You were asked by Mr. Thody if the gasoline was furnished to the bulk plants, and I believe he was referring to the wholesale distributor plants, on consignment, and your answer was that "the title remained in the company": do you recall that?

A. Yes, sir.

Q. Well, now, it is correct that the title remains in the Company, is it not?

A. Yes, sir.

Q. But is that not characteristic of a sale on consignment that the title to the product remains in the consignor anyway?

A. I think it is.

Mr. Hall: That is all.

Mr. Thody: I would like permission to ask two questions on the subject you brought out.

Mr. Hall: Oh, sure.

Redirect examination.

By Mr. Thody:

Q. Mr. Bussert, is it not a fact that administratively you are set up to redistribute gasoline according to districts and branches?

[fol. 1782] Mr. Hall: I think that has already been asked and answered, Mr. Thody, in his previous answer as indicated.

Mr. Thody: Is that not your testimony?

A. Distribution is effected to keep all plants supplied with products. Administratively, in districts, as far as being able to designate where it went.

Q. My question is on your administrative setup, your overall organization pattern—it is based upon districts and branches within districts; is that correct?

A. Yes, sir, that is correct.

Q. And those districts in many instances would overlap state lines, is that correct?

A. Yes.

Q. Then in your distribution of these products from bulk plants, you are primarily concerned with the districts rather than state sales areas, is that correct?

A. The question is a little confusing to me.

Q. The sales districts you have referred to in many instances, will overlap state lines, is that correct?

A. In some instances.

Q. Do the sales districts covering the State of California overlap state lines?

A. Slightly.

Q. Do you know the volume of gasoline and other bulk goods handled by the bulk plant at Reno?

[fol. 1783] A. I do not.

Q. Is it a large bulk plant or a small bulk plant?

A. Medium size—mediumly small.

Q. Approximately what size?

A. Size being indicated by what, the amount of bulk storage they had there?

Q. Yes, capacity.

A. Relatively small.

Q. Approximately what would it be?

A. Probably of 1600 barrels there.

Q. What is the approximate capacity at Minden?

A. Probably 1200 or 800 barrels.

Q. At Parker?

A. Let's see, they're 800 or 1200 barrels.

Q. And the other four bulk plants that ship into California?

A. Relatively—approximately the same size.

Q. Which was—approximately?

A. 1200 to 1600 barrels.

Q. In your testimony that this—the combined distribution of the seven bulk plants located along the borders, in Nevada, which ship into California——

Mr Hall: Wait a minute; two are in Oregon, three in Nevada, and two in Arizona.

Mr. Thody: —the eight bulk plants located outside the [fol. 1784] State of California which ship into the State of California, in your testimony that the amount or the volume is infinitesimally small?

Mr. Hall: Well—just a minute, now—all right.

Mr. Thody: I am just interested with respect to what——

A. Yes.

Q. You mean "small" as compared to what?

Mr. Hall: Just a minute; that has been asked and answered because he has compared that volume with the entire volume distributed in California.

Mr. Thody: In California?

A. Yes.

Mr. Hall: From both inside California and outside California.

Mr. Thody:

Q. Now, with respect to your testimony on the operations of the bulk plant at Crescent, can you give us an approximation of the size——

Mr. Hall: That was Crescent City.

Mr. Thody: Yes, Crescent City—the size of that bulk plant?

A. Either 1200 or 1600 barrels.

Q. And Cedarville?

A. Either 800 or 1200 barrels.

Q. Blythe?

[fol. 1785] A. I think 1200 barrels.

Q. Tallac?

A. Either 800 or 1200 barrels.

Q. Laws?

A. I think 1200 barrels there.

Q. And likewise when you say this was small you are referring to a comparison with the total sales within the State of California?

A. Yes, sir.

Mr. Hall: Well, now, wait a minute. My question related to total distribution.

Mr. Thody: I am sorry.

Mr. Hall: Total distribution from bulk plants inside of California. You so understood?

A. Yes.

Mr. Thody: I am sorry.

A. Having in mind you asked the same question.

Mr. Thody: I am sorry. May the record read as compared with the total distribution within the State of Cali-

fornia from bulk plants located within the State of California, is that correct.

A. Yes.

Mr. Thody: That is all.

Mr. Hall: That is all.

(Signed) *L. M. Bussert*"

[fol. 1786] HARRY T. HAYS, a witness called on behalf of the plaintiffs, being first duly cautioned and sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

By Mr. Somerville:

Q. Will you state your name for the record?

A. Harry T. Hays.

Q. What is your address, please?

A. My home address or——?

Q. Your business address?

A. 225 Bush Street, San Francisco.

Q. What is your present position?

A. Manager of Sales Equipment Division, Marketing Department, Standard Oil.

Mr. Hall: This is Standard Oil Company of California?

A. Of California.

Mr. Somerville:

Q. How long have you held that position, Mr. Hays?

A. It will be three years in July.

Q. Have your had any previous experience in the Standard Oil organization, the Marketing Department, prior to that?

A. Thirty-two years.

[fol. 1787] Q. Now, with respect to the Sales and Equipment Division of the Marketing Department, what are its functions?

A. The function of the Sales Equipment Division is to pass on operating equipment used in the operations of the Wholesale and Retail Departments of the Company, as to

its value. In other words, to keep up with all of the new equipment coming on the market.

Q. By equipment, what do you mean?

A. Operating equipment, machinery, pumps, compressors; all of those, in addition to the operation of so-called accessory warehouses.

Q. What are your duties in connection with that?

A. The procurement, warehousing, and distribution.

Q. Does the scope of your duties include supervision over all of the accessory warehouses?

A. Functional supervision.

Q. You are familiar with the operations generally of all of the accessory warehouses?

A. Yes, sir.

Q. Mr. Hays, referring to what has been marked "Plaintiff's Exhibit C for identification," can you tell us whether this sheet was prepared under your direction by you?

A. It was.

Q. Does it represent an accurate account of the location of the accessory warehouses?

[fol. 1788] A. It does.

Q. That includes all of the warehouses under the jurisdiction of Standard Oil Company, Standard Stations, Inc.?

Mr. Hall: That is all the accessory warehouses.

A. This is accessory warehouses only.

Mr. Somerville: Yes.

Mr. Hall: Don't you want to ask him if it accurately describes the areas as served by each of the accessory warehouses?

Mr. Somerville: Yes.

Q. Does this accurately describe the areas served by each of the warehouses?

A. Yes.

Q. This list?

A. Yes, it does.

Q. Coming now to the staff of your Sales and Equipment Division, how many employees are in charge of the warehouse operations—are employed in the operations?

A. In the operation of the warehouses?

Q. Yes.

A. Not including my office?

Q. Not including your office.

A. Actually in the warehouses?

Q. Yes.

A. As of our last payroll, I believe it was 72.

[fol. 1789] Q. 72?

A. Directly.

Q. Are those employees centrally located here in San Francisco?

A. No.

Mr. Hall: Didn't he say it was 72 exclusive of the central office location?

A. Exclusive of my office.

(Discussion off the record.)

Mr. Somerville:

Q. To what extent are Standard Oil of California and Standard Stations, Inc., engaged in the sale and distribution of automotive accessories?

Mr. Hall: Well, now, I want to reserve an exception with respect to automotive accessories, the objection to testimony with reference to automotive accessories being that such testimony is incompetent, irrelevant and immaterial. May it be deemed, Mr. Somerville, that that exception and objection shall stand to all questions that you may put relating to automotive accessories as distinguished from tires, tubes, batteries? It will be so stipulated?

Mr. Somerville: It will be so stipulated. Would you like the question read back?

A. Yes.

(The record was read.)

A. They handle the same line of accessories. In other [fol. 1790] words, the Standard Oil dealer has remarketed through the dealer the same line that is marketed through the Standard Stations.

Q. Is there a separate organization to handle the marketing of Standard Stations, Inc., than the organization for Standard Oil Company of California?

Mr. Hall: Just a minute, now; with respect to tires, tubes and batteries and accessories?

Mr. Somerville: Yes.

Mr. Hall: The question is not intelligible to me. Maybe it is to the witness.

Mr. Somerville: Let me reframe my question.

Q. Does Standard Oil Company of California supply Chevron Stations with tires, tubes and batteries?

A. Yes.

Q. Does Standard Oil Company of California act as a distributor of automotive accessories to Chevron dealers?

A. It does.

Q. Does Standard Oil Company of California act as a distributor of tires, tubes and batteries to Standard Stations, Inc.?

A. From our accessory warehouses, yes.

Q. Does Standard Oil Company of California act as a distributor of automotive accessories to Standard Stations, Inc.?

[fol. 1791] A. It does.

Q. Does the Sales and Equipment Division of Standard Oil Company of California maintain an organization with respect to Standard Stations, Inc., and to the Standard Oil Company of California?

Mr. Hall: Well, now, just a minute; that is not intelligible. Read the question, please.

Mr. Somerville: Let's reframe that.

Q. On sales of automotive accessories, that is, inclusive of tires, tubes, batteries, and other accessories, is there a separate organization handling that separate from the Standard Oil Company of California?

A. No.

Q. Sales to Standard Stations, Inc., then would be under your jurisdiction?

A. That is right.

Q. And the staff to which you have testified——

Mr. Hall: Just a minute; may I have the last question read?

(The record was read.)

Mr. Somerville:

Q. Does Standard Oil Company of California sell to all types of Chevron dealers irrespective of the—I will re-

frame that. Does Standard Oil Company of California sell the full line of accessories, including tires, tubes, batteries, to Chevron operators irrespective of the type of contract [fol. 1792] which they have with Standard Oil Company?

A. I am not in a position to answer that.

Q. Can you say——

Mr. Hall: Off the record.

(Discussion off the record.)

Mr. Somerville:

Q. Is it your understanding that all Chevron dealers to whom you distribute automotive accessories are under TBA contract?

A. That is correct.

Q. What is meant by TBA contract?

Mr. Hall: Well, now—just a minute. That calls for a conclusion of the witness and calls for that which is not the best evidence. It is objected to as irrelevant, incompetent and immaterial. The contract speaks for itself. The government has contracts, forms of contracts, and also forms of TBA contract.

Mr. Somerville:

Q. Under the TBA contracts you supply Chevron operators with accessories in addition to tires, tubes and batteries, do you not?

A. Yes, sir.

Q. Under the sales arrangements made with the Chevron dealers, is it true that volume—discounts are—discounts for volume are granted?

Mr. Hall: Well, now, discount for volume of what?

[fol. 1793] Mr. Somerville: Of automotive accessories.

A. May I clarify that? My work, my department is to distribute on orders from a dealer when authorized by the Marketing Sales Department. I am not familiar with the agreements between the Sales Department and the dealers.

Q. Mr. Hays, how are orders placed by Chevron operators on accessory warehouses?

A. They have a form 629—I think it is—two forms, one for tires, tubes and batteries, and another form for so-called

automotive accessories—that is mailed to the accessory warehouse within the territory served, and the shipment is made from that order directly to the dealer.

Q. Is the procedure the same with respect to orders originating from Standard Stations, Inc.?

A. It is.

Q. How is the merchandise sent to the dealers, Chevron dealers?

A. (No response.)

Q. That is, method of transportation. How are the orders billed?

A. The orders, when they are received, they are shipped whichever is the fastest and most economical method, all through common carrier.

Q. How is the billing done with such merchandise purchases?

[fol. 1594] A. The warehouse receiving the order makes out in turn the 800A. That is a billing invoice.

Q. Are any sales of automotive accessories made on consignment to Chevron operators?

Mr. Hall: Are you distinguishing between tires, tubes and batteries on the one hand, and accessories on the other?

Mr. Somerville: Off the record.

(Discussion off the record.)

Q. Are tires and tubes sold to Chevron operators or are they distributed on consignment?

A. On consignment.

Q. Are batteries distributed to Chevron operators on consignment?

A. On consignment.

Q. With respect to tires, tubes and batteries, has that policy of consignment been in effect for a period of time, or——

A. (Interposing) It was in effect prior to the war, and at the time that the manufacturer of those products was restricted consignment was eliminated because we did not have anything to put out on consignment. We were operating on a very—what we called an allocation, so, we had to distribute the best we could, and the dealer bought them on his regular purchases.

Q. Are automotive accessories, other than tires, tubes,

[fol. 1795] and batteries, distributed to Chevron operators on consignment?

A. No.

Q. With respect to tires, and tubes, sold on consignment to the Chevron dealers, are shipments sent without specific orders from the dealers?

A. No.

Q. In every event then an order must originate from the Chevron dealer?

A. That is correct.

Q. There is no policy with respect to keeping a minimum stock on hand in Chevron stations?

A. A minimum stock?

Q. Yes. Of tires, and tubes.

A. Yes. When the dealer sells, he is supposed to replace his consignment, place an order for replacement of the consigned stock which he has sold.

Q. Is that true with respect to the batteries also?

A. Yes.

Q. Referring now to the eight accessory warehouses listed in Exhibit C, are these warehouses utilized for distribution of products other than automotive accessories?

A. There are only two which—not—no—let me correct that. It is only automotive accessories. I was thinking you were referring to petroleum products or something of that nature?

[fol. 1796] Q. What is the arrangement of the distribution covered by each warehouse?

Mr. Hall: May I have that read, please?

(The record was read.)

Mr. Somerville: I think the exhibit covers that. I would like to go on to another question.

Mr. Hall: You withdraw the question?

Mr. Somerville: I withdraw the question.

Q. What is the nature of the inventories of tires and tubes in each of these warehouses?

Mr. Hall: Well, now that isn't—I just object to that as unintelligible and too vague to call for any definite answer.

Mr. Somerville:

Q. Mr. Hays, is there not a fixed policy to keep certain stocks of tires and tubes on hand in accessory warehouses?

A. Yes, sir.

Q. What is that policy?

A. Well, I would say the same as any other business, when your stock is depleted you replace it. You maintain a given stock.

Q. How many days supply of tires, tubes, are normally kept on hand?

A. That depends on our supply. We are given—we [fol. 1797] order monthly and maintain our stocks.

Q. During the period of wartime shortages tires and tubes had been moving in and out of the warehouse?

A. In one door and out the other.

Q. What is your policy with respect to inventories of batteries?

Mr. Hall: Policy with respect to what?

Mr. Somerville: To inventories or to supplies which will be kept on hand in warehouses.

A. Well, the batteries is something that cannot be stored for any length of time, so we try to keep in one month's supply mostly.

Q. Is there a company policy for keeping on hand any minimum supplies of automobile accessories other than tires, tubes and batteries?

A. We endeavor to maintain not to exceed a three months stock.

Mr. Hall: You meant warehouses, counsel?

Mr. Somerville: That is correct, at the warehouses.

Q. Who determines the size of the supplies that are kept on hand?

Mr. Hall: At the warehouses?

Mr. Somerville: At the warehouses.

A. From the projected marketing movement.

Q. Is the determination of the stock of accessories deter- [fol. 1798] mined by each warehouse manager or by a centralized authority?

A. That varies. Certain things are ordered from my office here.

Q. What are those things?

A. At the present time it is tires and tubes and batteries and a few accessory items which are, you might say, on quota.

Q. What are those items?

A. Well, there is tires and tubes and batteries; seasonal items such as antifreeze, tire chains, car heaters and coolers. Well, those are the principal things. I couldn't enumerate them all here, but there are probably not over fifteen to twenty items.

Q. With respect to automotive accessories other than tires, tubes, and batteries, is this merchandise retained in the original packages received from suppliers at the warehouses?

A. Well, some we break the package and place in bins, because it's shipped in broken packages, less than full packages. Everything else is retained in the full package, where a full package can be shipped.

Q. What are some items that might be placed in bins?

A. Well, we have some, let's say, miniature lamps, spark plugs, battery cables, small accessories.

[fol. 1799] Q. How are tires received in the accessory warehouses?

A. Either through—mostly through railway carload; some points highway truck transportation.

Q. How are batteries received in the accessory warehouses?

A. The same.

Q. How are tires stocked in the accessory warehouses?

Mr. Hall: Just a minute; what do you mean by stocked?

Mr. Somerville: I was going to add—that is, are they kept on sidings in the railroad tracks, are they actually placed in warehouses, or are they immediately moved out to the——

A. (Interposing) They are immediately unloaded from the cars when they are received and are stored in the warehouses.

Q. With respect to tires, would the movement out of the warehouse be immediate after receiving a shipment?

Mr. Hall: That question is not clear. I don't know what you mean by that. I object to it; it is unintelligible.

Mr. Somerville: I will withdraw that.

Q. What is the average turnover of those tires received in carload lots?

Mr. Hall: What do you mean by turnover?

Mr. Somerville: After a carload of tires is received at [fol. 1800] an accessory warehouse, how long is it before that carload lot moved out of the warehouse to fulfill the orders of your dealers?

Mr. Hall: Now you are referring to tires and tubes?

Mr. Somerville: Yes.

A. Well, up until the last few months they had gone out probably within a week because we had been on allocation and we hadn't been able to procure tires enough to meet the demand, and so they had gone right out.

Q. Has there been a similar situation with respect to batteries?

A. The same, yes.

Q. Has there been any analogous situation with respect to any other automotive accessories?

A. Yes.

Q. Can you name some of the principal items of that situation?

A. The principal thing—lamps, fuses, battery cables, fan belts—many of those things which were on allocation all during the war, and they were all back ordered and shipped immediately as they were received.

Q. Frequent delays then have been encountered in fulfilling orders on all of these items?

A. Oh, yes.

Q. Does Standard Oil Company of California, own and [fol. 1801] operate each of these warehouses?

A. Yes.

Q. And the personnel employed in each of these warehouses is under the supervision of the Sales and Equipment Division of——

A. (Interposing) No. I said my function was directing it, but it comes under the location organizations. For instance, Los Angeles, the actual operation is directed by our manager in Los Angeles and different places.

Q. He would be an employee of Standard Oil Company of California?

A. Yes.

Q. And the warehouse employees would be employees of Standard Oil Company of California?

A. Yes, sir.

Q. In ordering supplies of tires and tubes for these warehouses, am I correct in my understanding that you are responsible for placing orders on the Atlas Supply Company or manufacturers?

A. That is right.

Mr. Hall: Wait a minute—"Atlas Supply Company or Manufacturers"?

A. On Atlas Supply Company.

Mr. Hall: Then as I understand it, the witness has answered your question that with respect to Atlas Supply [fol. 1802] Company and not with respect to manufacturers.

Mr. Somerville: That is right.

Q. Mr. Hays, who decides on the type of the amount of merchandise to be stocked in each of these warehouses?

A. That is decided by a committee, of which I am a member, together with the merchandising departments.

Q. By "merchandising departments"——

A. (Interposing) Those responsible for the actual selling.

Q. The warehousing manager in each of these districts, here, would he be a member of that committee?

A. No.

Q. What are the various brands of merchandise stocked in the warehouses, accessory warehouses?

Mr. Hall: You are calling for the brands and not for the description of the merchandise itself, is that correct?

Mr. Somerville: That is right.

A. Mostly Atlas, although the merchandise which we procure through Atlas, it comes under its own brand. For instance, head lamps, spark plugs.

Q. Do accessory warehouses handle other than Atlas tires and tubes?

A. No.

Q. Do accessory warehouses handle other than Atlas batteries?

[fol. 1803] A. Not at the present.

Q. Do accessory warehouses handle other than Atlas fan belts?

A. We have some which we were unable to get from Atlas during the restricted period and we bought from other sources, yes.

Q. Whenever supplies are available from Atlas Supply Company would other brands be stocked?

A. Not of the same merchandise.

Q. How is the merchandise received into the warehouses?

Mr. Hall: The question isn't——

Mr. Somerville: (Interposing) Well, let's put it this way.

Q. Do shipments of tires and tubes come directly from the manufacturer?

A. They are shipped directly from the manufacturer, yes.

Q. Do shipments of batteries come directly from the manufacturer?

A. They do.

Q. Do shipments of the principal other items of automotive accessories come directly from the manufacturers?

A. From the manufacturer.

Q. Are there ever interwarehouse shipments made?

[fol. 1804] A. May I ask, do you mean between the manufacturer and our warehouses?

Q. No, I mean——

Mr. Hall: He means, from one accessory warehouse to another accessory warehouse.

A. Oh, yes. Adjustment of stocks at times.

Mr. Somerville: What determines the necessity for interwarehouse transfer?

A. Well, it may be that they—one fellow would overestimate their requirements and another under-estimate it, and it would be just balancing our stock. They would be running short and one would take from this warehouse over to another district.

Q. Are orders of the warehouses for supplies of Atlas

tires placed directly with the manufacturers of those tires or through Atlas Supply Company?

A. Through Atlas Supply Company.

Q. Is that true with respect to batteries?

A. It is.

Q. Is that true with respect to the principal other items of automobile accessories?

A. That is right.

Mr. Hall: You meant, of course, the other accessories that are procured through Atlas? He has testified that some of the accessories, other than tires, tubes and batteries, come [fol. 1805] from other manufacturers than Atlas.

Mr. Somerville: That is my understanding.

Q. Have manufacturers of accessories, automotive accessories, negotiated directly with you or with anyone in your division concerning distribution through your warehouses?

A. Yes. We have—there are manufacturers calling on us to interest us in their lines and things like that.

Q. Have you accepted their lines in some instances?

A. We have.

Q. Have you accepted their lines, the lines of any manufacturers, covering accessories that might be supplied by Atlas?

A. They may be a similar line but it isn't identically the same product.

Q. Have you required manufacturers of any automotive accessories to make arrangements for distributing their product through your warehouses under the Atlas brands?

Mr. Hall: May I have the question read, please?

(The record was read.)

A. Well, I have to answer that this way. We naturally wish to feature the Atlas brand; and, for instance, Champion Spark Plugs are now placing their plugs in an Atlas trademark carton.

Q. Why do you seek to mark it under the Atlas brand?

[fol. 1806] Mr. Hall: That is objected to as calling for a conclusion of the witness, and incompetent, irrelevant and immaterial.

Mr. Somerville: The witness stated that naturally they wished to feature the Atlas brand.

Mr. Hall: You are calling for the conclusion of the witness nevertheless. The objection is also predicated upon the thought that it is quite immaterial as to their reasons. The question is what they do, not why they do it.

Mr. Somerville:

Q. Do you distribute automotive accessories under the Atlas brand? Now, I am referring to accessories other than tires, tubes and batteries. —pursuant to any agreement with Atlas Supply Company?

A. Oh, yes. Not under Atlas brand.

Mr. Hall: What was the answer? Did I get that right? Will you read the question back, Mr. Reporter?

(The record was read.)

A. It would be "No" then, because we are not in a position to market anything under Atlas brand that doesn't come from Atlas. That is Atlas' trademark.

Mr. Somerville: Well, what I mean to say is that do——

Mr. Hall: Why don't you ask him if he has a contract with Atlas?

Mr. Somerville:

Q. You have a contract with Atlas Supply Company covering automotive accessories?

[fol. 1807] Mr. Hall: Not "covering" because if there is a contract the contract speaks for itself. Now, as a part of your demand for production under Rule 34 in this case you have requested, as I recall it, the Atlas contract. That is going to be furnished to you. Now, the contract speaks for itself. So, don't ask this witness as to conclusions as to what the contract contains or his interpretation of the contract.

Mr. Somerville: I will be satisfied with another question here.

Q. Are there any conferences held with representatives of Atlas Supply Company concerning distribution of automotive accessories other than tires, tubes and batteries under the Atlas brand name?

Mr. Hall: Would you read that question, please?

(The record was read.)

Mr. Hall: Are you inquiring as to the practice, Mr. Somerville?

Mr. Somerville: Yes.

A. The only thing we would consult with Atlas on, if we decided we would like to market a certain thing that is presented to us, would be to ask Atlas if they will be interested in marketing this product under their name, telling them who the people are. They would make any arrangements or anything of that nature.

[fol. 1808] Q. What is the relationship of the Atlas Supply Company to the Standard Oil of California?

Mr. Hall: What do you mean by "what is the relationship"?

Mr. Somerville:

Q. Does Standard Oil Company have any ownership in the stock of Atlas Supply Company?

Mr. Hall: Is that your question?

Mr. Somerville: Yes.

A. I only from hearsay understand that.

Mr. Hall: I don't want you to give any hearsay.

Mr. Somerville: We don't want any hearsay. Can you state of your own knowledge?

A. To my knowledge I have never seen an agreement.

Q. Are there any officers of the Atlas Supply Company who are also officers of Standard Oil?

Mr. Hall: I have no objection if the witness knows. Do you know the answer to that question?

A. Yes. One of our officers is an officer of the Atlas Supply Company.

Mr. Somerville: Who is that officer?

A. That is Mr. E. J. McClanahan, Vice President in charge of Marketing.

Q. Are any employees of Atlas Supply Company on the payroll of Standard Oil Company within your knowledge?

A. Not to my knowledge.

[fol. 1809] Q. Do you know what position Mr. McClanahan has with Atlas?

Mr. Hall: That is objected to as incompetent, irrelevant and immaterial.

Mr. Somerville: It shows integration between the operations, between the Atlas Supply Company and Standard Oil Company.

Mr. Hall: That is not within the pleadings.

Mr. Somerville: May he be permitted to answer subject to objection?

Mr. Hall: Subject to objection, yes.

A. He is a director.

Mr. Somerville: Do you know what period of time the present contract between Atlas Supply Company and Standard Oil Company of California covers?

Mr. Hall: Just a minute; the contract will speak for itself. You're calling for the terms of a contract.

Mr. Somerville:

Q. Is Standard Oil Company of California the sole distributor for Atlas Supply Company?

Mr. Hall: That is objected to as incompetent, irrelevant, immaterial, and not within the pleadings.

Mr. Somerville: I would like that answer subject to that objection.

Mr. Hall: I don't think you are entitled to go into that. It has no possible relation to anything which you com-
[fol. 1810] plained of in this case.

Mr. Somerville: I think that has a bearing upon the interstate character of the arrangement in question. It shows control from start to finish over the automotive accessories in question; control from the common source.

Mr. Hall: I don't think it shows any such thing. It can't possibly show any such thing. In the second place, you haven't pleaded it.

Mr. Somerville: It has a bearing upon the interstate commerce it pleaded it had. If Atlas Supply Company——

Mr. Thody: And the motive.

Mr. Hall: Motive for what?

Mr. Thody: For the whole observation in this thing.

Mr. Somerville: If Atlas Supply Company——

Mr. Hall: Read the question to the witness. If the witness can answer, it can go in under my objection.

(The record was read.)

Mr. Hall: Subject to my objection.

A. Within our marketing territory.

Mr. Somerville:

Q. By that you mean the seven western states, California, Washington, Oregon, Arizona, Nevada, Idaho, and Utah?

A. With the exception of Utah and Idaho, in which Atlas supplies are marketed by the Utah Oil Company.

Mr. Hall: Utah Oil Refining Company?

[fol. 1811] A. Yes, sir.

Mr. Somerville:

Q. Mr. Hays, who manufactures Atlas tires and tubes and from what factories do you receive shipments?

Mr. Hall: Well, now, wait a minute; that question is double barrel. Why don't you spread it out?

Mr. Somerville: O. K.

Q. Who manufactures Atlas tires and tubes?

Mr. Hall: You mean——

Mr. Somerville: Distributed through your accessory warehouses?

A. Through our accessory warehouses—United States Rubber Company.

Q. From what factories do your accessory warehouses receive shipments?

Mr. Hall: Tires and tubes, you mean?

Mr. Somerville: Of tires and tubes.

A. Los Angeles.

Q. Are shipments received from any other factories of tires and tubes?

Mr. Hall: At the accessory warehouses?

Mr. Somerville: At the accessory warehouses.

A. Only when there might be something, that they're ordered through Los Angeles but might come from some other source, through the many cities, through the other [fol. 1812] factories. That may be the case where they couldn't fill it there.

Q. Who manufactures Atlas batteries distributed through your accessory warehouses?

A. There are several; Auto-Lite, Solar and others.

Q. Where is that located?

A. Oakland. Solar, Los Angeles, and—it slipped my mind for a moment—one of the major battery companies here.

Q. Are any——

A. It just slipped my mind for a moment. It's a major company.

Q. Let me ask an additional question. Are any Atlas batteries distributed through your accessory warehouses received from factories located outside of the State of California?

A. Only at times, which would apply the same as the factory, the local factory, and they might have to ship that which they were unable to obtain, but that is exceptional.

Q. Who manufactures Atlas spark plugs distributed through accessory warehouses?

A. Champion Spark Plug.

Q. From what factories do you receive shipments of those spark plugs?

A. They come from the eastern states. I believe it's [fol. 1813] Jersey; come from various factories—we don't know where—when we place an order where they would be shipped from. It's an eastern shipment.

Q. What manufacturer or manufacturers manufacture battery cables distributed through accessory warehouses?

A. Well, there have been several. When we place an order to Atlas, they may come from different manufacturers.

Q. Located outside the State of California?

A. Outside the State of California, yes.

Q. What manufacturers manufacture fan belts distributed through your accessory warehouses?

A. That would be the same thing.

Q. What manufacturers produce oil filters distributed through your accessory warehouses?

A. They come from the east also. Some manufacturers are the same as Atlas are not tied up with any one manufacturer.

Q. From what manufacturers are shipments of waxes, polishes, and other chemicals received by your accessory warehouses?

A. Various manufacturers.

Q. Located throughout the United States?

A. Throughout the United States.

Q. Is that true also of radiator caps?

A. Yes.

[fol. 1814] Q. Oil filter elements?

A. Yes.

Q. And automotive accessories we have not named specifically?

A. Yes.

Q. Do you receive Atlas tires and tubes into the accessory warehouses on consignment?

A. No.

Mr. Hall: You mean, on consignment from Atlas?

Mr. Somerville: Yes.

Mr. Hall: Or from manufacturers?

Mr. Somerville: No.

Q. How are orders placed on Atlas Supply Company by accessory warehouses?

A. Through a regular ordering form which we have.

Q. Does title to automotive accessories supplied by Atlas Supply Company to your accessory warehouses pass at the time shipment is made to those warehouses?

A. Passes to Standard Oil.

Q. To Standard Oil Company?

A. Yes.

Q. That you know?

A. Well, I would say it does when they are received in the warehouse, yes.

Q. Do you have any knowledge of whether or not title [fol. 1815] vests in Atlas Supply Company from the manufacturer?

Mr. Hall: That is objected to as calling for a conclusion of the witness.

Mr. Somerville: I agree.

Q. With respect to the forms on which this merchandise is ordered, are they placed directly with Atlas?

A. With the local representative of Atlas here in San Francisco.

Q. And is a copy of that—does a copy of that form go to the central office of Standard Oil Company of California?

A. Goes to the accounting office for the billing.

Q. Are records maintained with respect to the amount of accessories, merchandise, including tires and tubes and batteries, by each Chevron station, Chevron dealer?

Mr. Hall: Will you read that, please?

(The record was read.)

Mr. Hall: You mean inventory records?

Mr. Somerville: No. Records of sales, purchases by Chevron dealers.

Mr. Hall: You mean, does each dealer that buys tires, tubes and batteries and accessories keep a record of what he buys?

Mr. Somevrille: No. Records of sales, purchases by sales made to Chevron dealers of automotive accessories, [fol. 1816] including tires, tubes and batteries?

A. Well, yes, for billing purposes.

Q. Are records kept for the purpose of granting discounts for volume sales?

A. For volume sales, yes.

Q. Do you know what those discounts are?

A. No, I do not.

Q. Going back, Mr. Hays, you stated that at times manufacturers will approach you or other representatives of the Company concerning your distributing their automotive accessories, and you testified sometimes—that you sometimes accepted their line and that it might be a similar line to the Atlas line. Could you clarify that further? What do you mean by similar line?

A. Well, I would say this, that it may be a car polish. Now, each motorist has his preference to a certain type of car polish that he might need. Car-Nu people, they have another one; and for certain types of polishing the public wants a soft polish, or a harsh polish, or some other kind, liquid wax or hard wax, or something like that.

Q. Do you stock polishes other than Atlas polishes in accessory warehouses?

A. Yes.

Q. In those instances in which these polishes are [fol. 1817] stocked there would be some peculiar appeal to the customer over the Atlas brand?

A. That is right.

Q. Referring now to Exhibit C for identification, you indicated here that the San Francisco warehouse services dealers in Northwestern Nevada, also the Lakeview District in Southern Oregon. Can you state approximately the amounts that are sold in those districts outside of California?

Mr. Hall: Amounts of what over what period?

Mr. Somerville: Amounts of tires and tubes.

A. No.

Q. Accessories?

A. No.

Mr. Somerville: I think that is all, Mr. Hays. Thank you very much.

Cross-examination.

By Mr. Hall:

Q. Is it correct that substantially all the requirements of tires and tubes furnished to the eight accessory warehouses listed in Exhibit C are furnished from factories in California?

A. Yes, sir.

Q. Is it correct that substantially 100 per cent of the batteries furnished to the accessory warehouses shown in Exhibit C are furnished from California factories?

[fol. 1818] A. Yes, sir.

Q. And I think you said that the practice, except for the war period, had been to consign tires and tubes to the dealers that took the tires and tubes from the accessory warehouses?

A. That is right.

Q. Is that correct?

A. That is right.

Q. And is the same thing true with respect to the batteries?

A. With respect to the batteries.

Q. You said that the distribution from the accessory warehouses to the dealers would be entirely by common carrier, is that right?

A. Entirely, yes, sir.

Q. And the methods of transport by the common carrier would be parcel post or Railway Express or freight, is that correct?

A. Would be either by railway freight, highway transport freight, parcel post, or American Railway Express.

Q. When the tires and tubes arrive at an accessory warehouse, they are sorted out and records made of the types and sizes?

A. Oh, yes, and checked against the shipping—bills of lading and stacked separately by sizes.

[fol. 1819] Q. Is the same thing true with respect to batteries?

A. Yes.

Mr. Hall: That is all.

Mr. Somerville: That is all.

(Signed) *Harry T. Hays*"

[fol. 1820] UNITED STATES OF AMERICA,
Northern District of California,
City and County of San Francisco, ss:

I hereby certify that on the 9th day of March, 1948, at 2:00 o'clock p. m., and on the 10th day of March, 1948, at 9:00 o'clock a.m., before me, EDITH GOEWEY, a Notary Public in and for the City and County of San Francisco, State of California, at Room 1712, Standard Oil Building, 225 Bush Street, San Francisco, California, personally appeared, pursuant to stipulation between counsel for the respective parties, FRANCIS S. OLAINE, L. M. BUSSERT, and HARRY T. HAYS, witnesses called on behalf of the plaintiffs herein; and W. A. THODY, Esquire, and LAWRENCE W. SOMERVILLE, Esquire, Special Assistants to The Attorney General, appeared as attorneys for the plaintiffs; and Messrs. LAWLER, FELIX & HALL, represented by JOHN M. HALL, Esquire, and Messrs. PILLSBURY, MADISON & SUTRO, represented by HENRY G. HAYES, Esquire, appeared as attorneys for the defendants; and the said FRANCIS S. OLAINE, L. M. BUSSERT, and

HARRY T. HAYS being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by their depositions hereto annexed.

And I further certify that the said depositions were then and there recorded stenographically by HARRY A. CANNON, a competent official and disinterested shorthand re-[fol. 1821] porter, appointed by me for that purpose and acting under my direction and personal supervision, and were transcribed by him; that the depositions are a true record of the testimony given by the said witnesses.

And I further certify that the exhibits hereto attached and marked for identification "Plaintiff's Exhibit A-1," "Plaintiff's Exhibit B-1," and "Plaintiff's Exhibit C," and the exhibits accompanying the depositions and marked for identification "Plaintiff's Exhibit A," and "Plaintiff's Exhibit B," are the exhibits referred to and used in connection with the depositions of said witnesses.

And I further certify that the said depositions have been retained by me for the purpose of securely sealing them in an envelope and directing the same to the Clerk of the Court as required by law.

And I further certify that I am not of counsel or attorney for either or any of the parties, nor am I interested in the event of the cause; I further certify that I am not a relative or employee of or attorney or counsel for either or any of the parties, nor a relative or employee of such attorney or counsel, nor financially interested in the action.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at the City and County of San Francisco, State of California, this *25th* day of *March*, A. D. 1948.

(Signed) Edith Goewey
Notary Public in and for the City and County of San Francisco, State of California.

[fol. 1822] Mr. Hall: Now, for lack of further ammunition, your Honor,——

The Court: That is all right. We have done pretty well today. One thing, gentlemen, that occurred to me, and that is, I indicated that I wouldn't make you work on Monday, but since this morning I have signed three stipulations con-

timing all of the important motions, one a pre-trial in a very important case, and interrogatories relating to a law suit that is set for trial, and which has been settled, and another one, which has reduced my Monday calendar considerably, and while I can use the time to advantage, in the interest of economy it occurred to me that if it wouldn't inconvenience you too much I might give you until 2:00 o'clock and we might proceed in this case in the afternoon of Monday. But if you have made commitments, on your assurance that you feel you can conclude next week, I am not inclined to insist on it.

Mr. Hall: I certainly do, your Honor. I think I can guarantee that our evidence will be in before the end of the week even if we begin on Tuesday.

The Court: This is not for the record.

(Discussion between court and counsel outside the record.)

The Court: Then the further proceedings in the case will be continued to Tuesday morning, May 25th, 10:00 o'clock, [fols. 1823-1824] and court will stand adjourned until the usual time.

(Whereupon, at 5:00 o'clock p. m., May 21, 1948, an adjournment was taken until 10:00 o'clock a. m., Tuesday, May 25, 1948.)

[fols. 1825-1826] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

HONORABLE LEON R. YANKWICH, *Judge Presiding*

No. 6159-Y Civil

UNITED STATES OF AMERICA, Plaintiff

vs.

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., Defendants

Reporters' Transcript of Proceedings
Los Angeles, California,
May 25, 1948.

Appearances:
(As heretofore noted.)

[fol. 1827] Los Angeles, California, Tuesday, May 25, 1948.
10:00 A. M.

The Court: Cause on trial.

The Clerk: 6159 Civil, *United States of America* v. *Standard Oil Company of California, et al.*, for further trial.

The Court: Before we proceed with today's proceedings, I want the record to show that since our adjournment last Friday I have read the depositions of Francis S. Olaine—incidentally, the name seems to be misspelled throughout, the "i" being eliminated except in the signature; as Mr. Thody's name seems to be misspelled throughout, he being called Thrody for some reason or other. I don't know who started it, but I think even Mr. Hall got into the habit of calling him Thrody—and L. M. Bussert, and Harry T. Hays, taken in the city of San Francisco and relating to the manner of storing and distributing the various petroleum products and accessories in the Western Area, including the location of refineries and warehouses, and relating to the manner of moving petroleum products and accessories into these distribution centers, and warehouses and tanks, and then the method of supplying from them the various needs of the retail outlets of the defendant. I think that is a general statement of the nature of the controversy cov-

ered. It isn't supposed to be all-inclusive. I merely [fol. 1828] wanted to indicate what the testimony related to.

I may also state that I have had access over the weekend and yesterday to the box of exhibits, and have examined them more carefully than I have had an opportunity to do during the course of the proceedings; that is, the exhibits which are in the record.

With that, gentlemen, we will proceed. Call your next witness.

Mr. Hall: At the morning session of May 21st, when Mr. Ward Travis was on the stand, a request was made for monthly figures of gallonage for the months January to June, 1946. I ask that the sheet which I now present to the clerk be marked, for identification only, as Defendants' Exhibit next in order.

The Clerk: That will be Defendants' Exhibit PP, marked for identification.

Mr. Hall: May I say this with respect to Defendants' Exhibit PP, for identification, that as I indicated in the record —I will hand one of these sheets to your Honor——

The Court: Very well.

Mr. Hall: —as I indicated last week, there is great difficulty in reconstructing the figures for the area which Mr. Travis was describing.

Your Honor will recall that his survey covered the Los Angeles district, but only a portion of the Long Beach [fol. 1829] district. We have supplied in Defendants' Exhibit PP, for identification, the figures for the entire districts, but I understand that it would take several weeks to break down those figures in an accurate manner, to cover the exact area which was covered by Mr. Travis' survey. I may say also to your Honor, that it seems to me entirely immaterial to suggest such further breakdown for this reason, that the schedules which Mr. Travis identified were for the purpose of comparing Standard's outlets and operations with the operations and outlets of other oil companies, and that, therefore, it is quite immaterial what month was taken because the comparison is between companies, and whether the month was a high month or a low month for Standard, it was presumably a high month or a low month for the companies with which it was compared.

The Court: I think the only object of the inquiry was to

see if a fair basis was used, upon which the figures were grounded.

Mr. Hall: Well, we have done our best in response to the government's inquiry.

The Court: All right.

[fol. 1830] Mr. Thompson, will you take the stand, please?

Erskine D. Thompson, called as a witness by defendants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Erskine, E-r-s-k-i-n-e D. Thompson, T-h-o-m-p-s-o-n.

Direct examination.

By Mr. Hall:

Q. You are the Mr. E. D. Thompson who has testified previously as a witness called by the Government in this case?

A. That is correct.

Q. Is it or is it not a fact that petroleum products and tires, tubes, and batteries that are handled by Standard's dealers are handled also at company operated stations known as Standard Stations?

A. That is correct.

Q. Now, take for the first the Standard Stations: Those are a system of outlet which is entirely operated by employees of the company, isn't it?

A. Yes, sir.

Q. Is it or is it not a fact that many of those stations are now operating in locations where they have been operating for many years?

[fol. 1831] A. That is quite true.

Q. Now, still speaking of the Standard Stations, is it true that those stations have a particular color scheme insofar as the painting of the station and the facilities is concerned?

A. Yes, sir.

Q. What is that color scheme uniformly employed with respect to Standard Stations; what are the colors used?

A. Red, white, and blue.

Q. And is it true that those colors have been employed on Standard Stations for many years?

A. That was the color used when I went to work for the company in 1916.

Mr. Hall: I ask that there be marked for identification as defendants' exhibit next in order the colored photograph which I now hand to the clerk.

The Clerk: Defendants' Exhibit QQ for identification.

Mr. Hall: I ask that there be marked for identification with Defendants' letters next in order the photograph I now hand to the clerk.

The Clerk: RR, Defendants' RR for identification.

By Mr. Hall:

Q. I show you, Mr. Thompson, the colored photograph which has been marked Defendants' QQ for identification and ask you if that is a fairly typical station operated as a company-employee station and typical of what we call the [fol. 1832] Standard Stations?

A. That is quite typical. There are two types of stations, of course, the single and double-driveway, but the appearance would be the same.

Q. And I show you now, coming to stations that are not Standard Stations but dealer stations, do you in the company classify those stations in any way as types?

A. You have reference to the——

Q. The type 1 and the type 2.

A. —the difference between character? Yes. In our operation we classify Chevron dealers in two general classifications: Type 1 and type 2, type 1 being a station which is equipped and properly manned to serve general public and the needs of the motoring public, whereas the type 2 are units that are attached to some other type of business, usually the gasoline being handled as a matter of convenience; such as a small grocery store in a remote area, where complete facilities are not available to extend a complete service to the motoring public.

Q. Well, for illustration, I think there has been one witness called by the name of Musser who operated, it seems to me it was a grocery store, in connection with a service station. Would that be typical of a type 2 operation?

A. I believe Mr. Musser operated a type 1 station. I think it was a Mr. Smith who operated in Everett that was

[fol. 1833] on the stand the other day, who had a grocery store with a couple of pumps in front. That would be a type 2 type of outlet because it does not have the necessary facilities to properly serve motorist for their full requirements.

Q. You have spoken of Chevron stations. Are they painted, the stations and the facilities painted, in a color scheme which differs from that of the company operated stations?

A. Yes; they are quite different in color treatment.

Q. What are the colors used in the Chevron stations?

A. Cream, green, and burgundy.

Q. I show you the photograph which has been marked Defendants' Exhibit RR for identification and ask you if that is a typical example of a Chevron station?

A. Yes; that is correct.

Mr. Hall: I offer into evidence the photographs which have been marked for identification as Defendants' Exhibits QQ and RR.

Mr. Dixon: No objection.

The Clerk: Admitted, your Honor?

The Court: They may be received.

The Clerk: Defendants' QQ and RR admitted into evidence.

By Mr. Hall:

Q. You have spoken of Chevron stations. Those are the dealer stations and not the Standard Stations, is that correct?

A. That is correct.

[fol. 1834] Q. When did this system of Chevron stations—and I mean by that the stations with the color scheme that you have identified in connection with Chevron stations—become a practice with the company?

A. That program was started early in 1945 on a trial basis. Station colors were changed in the entire city of Palo Alto and at approximately 60 other units throughout the seven western states. That trial market program extended until the close of the war, when materials became more available and it was possible to expand it. From that time on until the middle of 1946 we converted the balance of the 6,000, approximately 6,000, dealer stations.

Q. Would you say that the change-over had been pretty well completed by the middle of 1946?

A. Pretty well completed. There were a few odds and ends of points where weather or some other conditions slowed down.

Q. Is it a fact that there were many former employees who, when that change-over occurred, were set up as independent dealers in Chevron stations?

A. That is correct.

[fol. 1835] Q. It is true now, isn't it, speaking generally, that there are many outlets which are in the first instance created by Standard? I mean by that dealer outlets?

A. Yes, that's right.

Q. Where the station is constructed by Standard, in the first instance?

A. Brought into being on that location, yes, sir.

Q. And a dealer is put in charge?

A. Yes, that is correct.

Q. Now, in that connection is there a term used in the company "a two-party deal" as distinguished from a "three-party deal"?

A. That is right.

Q. Those terms are used?

A. That's right.

Q. Will you tell us, first, what a two-party deal is in that parlance?

A. A two-party deal is where the dealer has possession of the premises either through ownership or a basic lease. The company takes a lease from the dealer and leases it back to the dealer. That would be a two-party deal.

Q. Now, what is a three-party deal?

A. A three-party deal is where the company leases property from the property owner, generally installs a station, and subleases to a third party, the dealer. That also [fol. 1836] would include a relatively small number of properties where the company owns the land in fee. They are included in a three-party deal, for simplification of our records.

Q. Can you give us the approximate number of three-party deals?

A. There are approximately 1200 three-party deals in the seven western states.

Q. Can you tell us approximately the percentage that would be of the total dealer accounts?

A. About twenty per cent.

Q. Now, is it or is it not a feature of the Chevron stations that the dealer's name is featured in any way?

A. That is right. His name occupies a most prominent space on the station.

Q. It is painted in a prominent way over the entrance, or on the canopy of the station, or something of that sort?

A. It is usually on the sides of the canopy, or on a fin on the canopy in porcelain enamel.

Q. Now, I show you, Mr. Thompson, the documents which have been collectively marked as Government's Exhibit 13, for identification, and I call your attention to the fact that the first page of that exhibit refers to certain forms designated as S-500-2 and S-500-3. Do you notice that?

A. Yes, sir.

Q. Now, have those forms been in use by the company [fol. 1837] in the regular course of its business for many years?

A. I would say since about 1944, at least. Forms of similar character have been in use for many years, but this particular form I think was put in in about 1944.

Q. Now, is it or is it not a fact that these forms, S-500-2 and S-500-3, are kept currently up to date by changes made on the face of the form from time to time?

A. That is right. They are supposed to be maintained up to date at all times.

Q. Those forms are maintained by the branches in the various sales districts?

A. That's right.

Q. And those forms are compiled by the branches by personal observation in the area of the branch?

A. That's right.

Q. Now, was the telegram which is shown on the first page of Government's Exhibit 13, for identification, sent out to the various district managers under your authority and by your direction?

A. That is right.

Q. Now, is it a fact that the subsequent pages of this exhibit, not including the last page, represent the reports from the districts stating the total number of stations, as

indicated in forms S-500-2 and S-500-3 within their area? [fol. 1838] A. That is the total number of stations other than those supplied by the Standard Oil Company.

Q. Yes. Now, you have caused to be brought into court those forms S-500-2 and S-500-3, which formed the basis for these reports from the sales districts which are included in Government's Exhibit 13, for identification?

A. That is right.

Q. And they are in that large wooden box over there?

A. That is correct.

Q. Now, I call your attention to the final sheet of Exhibit 13, for identification, and ask you if that is a summary showing the number of competitive stations, or the number of retail outlets in the various sales districts, included within the seven western states?

A. That is right.

Q. Is that also a correct summary of the so-called split pump accounts, which were shown by these sheets S-500-2 and S-500-3 to be in existence in those seven western states?

A. That is correct.

Q. If we should assume that Standard Oil Company of California in the seven western states has approximately 1,000 Standard stations, and approximately 6,000 dealer stations, and we added those figures to the figures shown on the last sheet of Government's Exhibit 13, for identifica- [fol. 1839] tion, what would be the figure for the total number of retail gasoline outlets in the seven states as of the date of this survey?

A. Roughly, 36,500.

Q. And what would be the number of split pump stations in that entire area?

A. 577.

Q. Can you give us the percentage that the split pumps would bear to the other total?

A. The split pumps would represent 1.6 per cent of the total number of retail outlets in the seven western states.

Q. And that is the total number of retail outlets of all suppliers?

A. That is right, including the Standard Oil Company.

Mr Hall: I offer in evidence Government's Exhibit 13, for identification.

Mr. Dixon: Objected to, your Honor, on the ground it is immaterial and irrelevant.

The Court: Overruled.

Mr. Dixon: Furthermore, your Honor, I might say this, that we also wish to raise the question of competency. Unless I am incorrect in this, Mr. Hall, I now understand that the records on which that summary is supposed to have been made are available to the government.

[fol. 1840] Mr. Hall: Oh, yes.

Mr. Dixon: And are they contained in the documents over there?

Mr. Hall: Oh, yes, they are in this wooden box, with this exception, which has already been brought out in the evidence, that these forms, S-500-2 and S-500-3 are kept constantly up to date by stations being stricken out and other stations added, so that, that change having gone on since the date of this survey, these documents in the wooden box may show some change from the basis reflected in the exhibit offered.

Mr. Dixon: In other words, it would depend upon the date upon which the particular survey was made as to what results you would get, and that result would not appear from the records which are available to the government in your box over here?

Mr. Hall: But all the original records are available to the government, so far as they are in existence.

Mr. Dixon: That is my point, if the court please.

The Court: Just a minute.

Mr. Dixon: Yes, certainly.

The Clerk: Then this would have to be Exhibit SS.

The Court: Go ahead.

Mr. Dixon: Pardon, your Honor. I was rising to object to the competency of it on all of the grounds stated, in [fol. 1841] that the records which were made available to the government on examination failed to disclose the number of stations from the records submitted as of the date of the survey, and, therefore, there is no way in which the government can check and determine from the records submitted whether these records are correct, from the summaries that have been submitted. As a matter of fact, we endeavored to do that yesterday and just couldn't make the figures submitted appear anywhere from the documents that were submitted to us for examination.

Mr. Hall: If there is any doubt in the court's mind, I would like to be heard on it.

The Court: The only question in my mind is the one just suggested, and that is, as to the summaries submitted, if the material on which they are based is available.

Mr. Hall: This survey, as your Honor knows, was made early in 1947. It was made from new sheets which are in the wooden box. These sheets list the location of service stations and designations of service stations. Now, as Mr. Thompson has testified, those sheets maintained in the branches of the company are, of course, subject to change on the face of the sheets themselves as time goes on; that is, you may find a station over here has gone out of business, and that a new one has come in somewhere else. There has been very little of that change, I think, proportionately [fol. 1842] since early in 1947 when these figures were compiled, but, at least, the entire original supporting data for the sheets which your Honor has before you are in the wooden box.

The Court: I see. The objections are overruled and Government's Exhibit 13, for identification, will be received in evidence as Defendants' Exhibit SS.

[fol. 1843] Q. Since June 1st of 1944 has Standard Stations, Inc., confined its activities to the management and operation of the company's employee-operated stations?

A. Yes, sir.

Q. I mean by that Standard Stations?

A. That is correct.

The Court: What was the date?

Mr. Hall: June 1st of 1944.

The Court: June 1st.

By Mr. Hall:

Q. Now, has Standard Oil Company of California——

Mr. Dixon: Pardon me, Mr. Hall. May I have the answer to the last question?

(Record read by the reporter.)

By Mr. Hall:

Q. Does Standard Oil Company of California in connection with the products and merchandise that is sold by dealers at Chevron stations employ certain registered trade names and trademarks?

A. That is right.

Mr. Hall: I ask that seven sheets which I now present to the clerk be marked collectively with defendants' letters next in order for identification.

The Clerk: That is Defendants' TT for identification.

By Mr. Hall:

Q. I show you the sheets which have now been marked Defendants' Exhibit TT for identification and ask you if those portray the trademarks and trade names which are [fol. 1844] now and, for a number of years last past, have been currently and commonly employed in connection with the products and merchandise sold through Standard Chevron stations?

A. That is right.

Mr. Hall: I offer Defendants' Exhibit TT into evidence.

Mr. Dixon: No objection, your Honor.

The Court: It may be received.

The Clerk: TT in evidence.

By Mr. Hall:

Q. Do other companies compete with Standard Oil Company of California in the sale of petroleum products, tires, tubes, batteries, and accessories?

A. Very aggressively.

Mr. Dixon: I object to that as immaterial, your Honor, and irrelevant.

The Court: Overruled.

Mr. Hall: What was the answer, Mr. Reporter?

(Answer read by the reporter.)

Q. Do those competitors compete with Standard Oil Company of California for the purpose of obtaining sites for service stations?

A. Yes; they do.

Mr. Dixon: I object to that, your Honor, as immaterial and irrelevant.

The Court: Overruled.

Mr. Hall: I ask that there be marked for identification [fol. 1845] three sheets which I now hand to the clerk.

The Clerk: That is Defendants' UU for identification.

By Mr. Hall:

Q. I show you, Mr. Thompson, the document which has been marked Defendants' UU for identification and ask you if that report was made to you in the regular course of business?

A. That is right.

Q. Did it come to you at about the date that it bears, July 15, 1947?

A. Yes; that is the date.

Q. From whom did you receive it?

A. I received it from our district manager in Long Beach.

Q. Was that a voluntary act on his part or did you request it of him?

A. We did not request it. It was a voluntary account that he had made and submitted to us for our information.

Q. The heading indicates LIST OF COMPETITIVE SERVICE STATION CONSTRUCTION ACTIVITIES SHOWING WORK IN PROGRESS AS OF JULY 15, 1947—LONG BEACH DISTRICT. Does the first column indicate the company that was putting up a competitive service station?

A. That is right.

Q. Then under the heading LOCATION that is the location of the station, is that correct?

[fol. 1846] A. Location of the construction; yes, sir.

Q. Then under the heading "APPROXIMATE DATE OF CONSTRUCTION STARTED" that was the date the construction started?

A. That is approximately the date.

Q. Under that heading TYPE OF STATION—REMARKS is there a description of the number of pumps at the station and other matters?

A. That is right.

Q. That indicates and is intended to indicate the construction activity by competitors of Standard Oil Company of California in that particular district as of that date, is that correct?

A. That is right.

Q. At that time how many dealer stations were under construction in the Long Beach district by Standard Oil Company of California?

A. None.

Q. Were there any Standard Stations under construction in that district as of that time?

A. There was one unit which was being relocated from one site to another because of the loss of a lease.

Q. And do you know how many competitive stations are shown to be under construction by this exhibit?

A. There are 48 on that list, representing quite a large number of competitors.

[fol. 1847] Mr. Hall: I offer into evidence the document heretofore marked for identification as Defendants' UU.

Mr. Dixon: Objected to as irrelevant and immaterial, and not representative of the conditions throughout the western area.

The Court: Overruled.

The Clerk: Defendants' UU in evidence.

By Mr. Hall:

Q. Do these competitors that you have referred to compete with the Standard Oil Company of California also in the matter of making arrangements with dealers of existing stations?

A. That is right.

Mr. Dixon: I am sorry. I did not get the question, Mr. Hall. Will you repeat it, Mr. Reporter?

(Question and answer read by the reporter.)

Mr. Dixon: Thank you.

A. That is correct; they endeavor to take over the entire station operation subject, of course, generally to agreements we may have in effect.

By Mr. Hall:

Q. Well, they do not ordinarily try to induce the dealer to break the agreement with Standard, do they?

A. No; they do not.

Mr. Dixon: I object to that question, your Honor.

The Court: Yes; I will sustain that objection.

[fol. 1848] By Mr. Hall:

Q. Then do I understand by your last answer that your competitors wait until your contracts have expired and then attempt to move in?

A. That is right.

Mr. Dixon: I object to that question, your Honor, on the ground that it calls for a conclusion.

The Court: Yes; it does call for a conclusion. You might ask him to describe, if he knows, any of the instances, to illustrate by any instances the methods which they use in trying to put in stations formerly operated by the Standard dealers.

Mr. Hall: Very well, your Honor.

Q. Based on your experience——

Mr. Dixon: If the court please, may the answer of the witness be stricken?

The Court: Yes; it may be stricken.

By Mr. Hall:

Q. Based upon your experience in the marketing department of Standard Oil Company, what can you tell us as to the methods that competitors of Standard employ for the purpose of getting one of the Standard's dealers?

A. That is the methods employed by the competitors?

Q. Yes.

A. They install facilities, absorb rentals, loan money, and a variety of ways to interest the dealer in switching to other products.

[fol. 1849] Q. And have there been a number of occasions in which those methods were successful?

A. A considerable number; yes.

Q. The dealers that handle the products of the competitors you have referred to handle gasoline and other petroleum products and, in cases, they handle tires, tubes, batteries, and accessories, don't they?

A. That is right.

Q. Is competition a factor in promoting the selection of the dealer by Standard?

A. It is one of the most important factors in our development of new outlets.

Q. I have referred to dealer stations handling the products of Standard's competitors. What can you tell us as to the relative desirability of the location of the dealers of those competitors as compared with the locations of the dealers handling Standard Oil's products?

A. From the location standpoint I would say that they are entirely comparable.

Q. From your observation and experience is it generally true that dealer stations which handle the gasoline of Standard's principal competitors handle the lubricating oil put out by the company whose gasoline is sold at the station?

A. They do.

Mr. Dixon: I object to that question, your Honor, as [fol. 1850] irrelevant and immaterial.

The Court: Overruled.

A. They do.

By Mr. Hall:

Q. Is it generally true that competitive companies selling brands of gasoline in competition with the Standard promote the sale of tires, tubes, and batteries through their dealers?

Mr. Dixon: I object to that on the ground that it is irrelevant and immaterial, your Honor.

The Court: Overruled.

A. They do. In fact a recent check we made of competitive practices indicated that there were 27 lines of tires and 28 lines of batteries promoted by our competitors to retail outlets.

By Mr. Hall:

Q. That was, as I understood you, 27 separate brands of tires?

A. 27 separate brands of tires and 28 separate brands of batteries.

Mr. Hall: I ask that the pages that I now hand the clerk be marked collectively exhibit for identification with the defendants' letters next in order.

The Clerk: Defendants' VV for identification.

By Mr. Hall:

Q. I think in your previous testimony, Mr. Thompson, you indicated—and I may be wrong about it; you correct me if I am—that prior to 1934 there was an agency under [fol. 1851] a lease and agency system employed by Standard, is that correct?

A. That is correct.

Q. In 1934 did a new agreement come into the picture?

A. Yes; the authorized distributor agreement.

Q. Is that an agreement substantially like Exhibit 2 in evidence?

A. That is right.

Q. Then, is it true that after 1934 you had not only the agency and the lease and agency system but you had this authorized distributor agreement?

A. That is right.

Q. Approximately when was it that the dealer agreements came into use?

A. In 1938 the dealer agreement superseded the agency agreement.

Q. I show you the documents which have been marked in evidence as Defendants' VV for identification, being prints of dealer agreement bearing the dates: May, 1938; June, 1940; August, 1941; November, 1941; January, 1942; February, 1942; October, 1943; and February, 1944, and ask you if those are forms of dealer agreements, there being comparatively, perhaps, little change in those forms, which have been used by the company over the years that I have indicated in describing the documents?

[fol. 1852] A. That is correct.

Mr. Hall: I offer the documents which have been marked VV for identification into evidence.

Mr. Dixon: No objection.

The Clerk: Admitted, your Honor?

The Court: They may be received.

The Clerk: That is VV in evidence.

By Mr. Hall:

Q. Then, is it correct to say that after 1938 there were dealer agreements, the authorized distributor agreements being used by the company?

A. That is right.

Q. I believe it already appears in evidence from a Government exhibit that in September, 1944, the dealer agreements TBA superseded the distributor agreements, is that correct?

A. That is right.

The Court: What year was that?

Mr. Hall: September, 1944. And that fact is stated, your Honor, in one of the Government's exhibits, I believe it is Exhibit 6.

[fol. 1853] Yes, that is correct, your Honor, Exhibit 6.

By Mr. Hall:

Q. By a distributor agreement, you understand that I am referring to the document which is Government's Exhibit 2 in evidence; is that right?

A. That is right.

Q. Now, when did the petroleum products and equipment agreements come into use by the company?

A. In the middle of 1944.

Q. Then is it fair to say that since 1944 the agreements in use by the company have been the dealer agreements, the dealer agreements TBA, and the petroleum products and equipment agreements?

A. That is right.

Q. Now, I want to call your attention to Government's Exhibit 4, and to paragraph 2, to the sentence in paragraph 2, reading in this way:

> "Company will deliver to dealer such other merchandise currently sold by company that dealer wishes to handle hereunder in quantities necessary in opinion of company to meet dealer's requirements at said premises."

Now, my question to you is this: In the practice of the company, has it been the practice of the company to determine the quantity of accessories, other than tires, tubes and batteries—well, let me reframe that question, please.

[fol. 1854] I will ask you to understand now, for the purpose of this question, that when I refer to accessories, I mean something other than tires, tubes and batteries. Do you understand that?

A. I understand that.

Q. Now, then, my question to you is this: Does the company, as a matter of practice, and has it ever, as a matter of practice, determined the quantities of accessories which should be taken by a dealer?

A. No, that is entirely up to the dealer, as to their quantities; subject to stocks available, we would possibly have to hold shipments down in cases of shortages of certain items,

but the orders are all placed by the dealer and he determines the quantity.

Q. So that the only thing that the company ever does would be to say to the dealer if he asks for too many accessories, "We don't have the accessories to give you"?

A. Yes, and that condition prevailed generally during the war. We had to exercise that provision.

The Court: What would be included under that designation of accessories?

The Witness: Oh, spark plugs and fan belts, and windshield wipers; practically everything in automotive accessories, except tires, tubes and batteries. It would be pol- [fol. 1855] ishes and, oh, sun visors. I mentioned fan belts, and hub caps; anything that is a part of an automobile, used generally as an accessory for an automobile other than tires, tubes and batteries.

By Mr. Hall:

Q. Now, suppose that a dealer is a dealer under a dealer agreement TBA, which is Government's Exhibit 4, and suppose that dealer wanted to handle accessories, and I am not talking now about tires, tubes and batteries, would he be perfectly free, and have dealers been permitted to handles accessories freely?

A. That's right.

Mr. Dixon: I object to the form of the question, your Honor. It calls for a conclusion and assumes a lot of things.

The Court: It does call for a conclusion. This witness is not in the same position as some of the witnesses of whom the questions were asked, because they were the person concerned, and it went to their interpretation of the contract. Therefore, the form in which the question is put is objectionable, so far as this witness is concerned. He may testify, however, if he knows, what the practice was regarding any accessories such as he has named which could be supplied; whether the dealer could supply himself from other sources in the line of accessories which he has given.

Mr. Hall: Yes, your Honor, I will ask him.

By Mr. Hall:

Q. Mr. Thompson, speaking now of dealers with a dealer [fol. 1856] agreement TBA, what has been the practice of

the company when such a dealer wanted to take on and stock other accessories, other than tires, tubes and batteries?

A. We would first try to sell him our own line of accessories, but failing in that, he would be permitted to handle anyone's accessories.

Q. Is there a term used in the merchandising field, as it affects these dealers,—the term "pie wagon"?

A. Yes.

Q. What is a pie wagon?

A. Well, in recent years the method of distribution has come into rather prominent use. What it is primarily is peddlers who have a little truck with compartments in it for carrying accessories, who call around, drive up and down the highways, and call on all the dealers selling and delivering off the truck. They buy their products from various sources, and sell them to all types of dealers, wherever they can.

Mr. Hall: Would your Honor entertain a motion for a recess?

The Court: Yes. I thought you were reaching the end of your examination and I did not want to break in.

Mr. Hall: I haven't come to that yet, but I have reached a convenient stopping place.

The Court: All right. We will take a short recess.

(A short recess was taken.)

[fol. 1857] Mr. Hall: It has been called to my attention, your Honor, that there is a little confusion in the exhibits to the depositions that you referred to this morning. This is not the fault of the court clerk but is the fault of the notary, Mr. Thody?

Mr. Thody: That is correct.

The Court: I thought we corrected that by putting in the exhibits independently the other day, Friday.

Mr. Hall: They have got the second page of one exhibit tacked onto the first page of the wrong exhibit.

The Court: Oh.

Mr. Hall: If I may make this suggestion, the error will be corrected.

The Court: Yes.

Mr. Hall: At present Exhibit NN appears to be two pages. As a matter of fact Exhibit NN was only one page.

I therefore ask that the second page be taken out and removed, and I will go on with the other correction then.

The Court: All right; that may be done.

Mr. Hall: That is agreeable, Mr. Thody?

Mr. Thody: Yes.

The Court: That may be done.

Mr. Hall: Then this is the page that goes out. You (the clerk) can just tear it right out.

Now, with respect to Exhibit LL, it now appears as only [fol. 1858] one page. It should be two pages, and I ask that the two pages that I now hand to the clerk be substituted in place of Exhibit LL.

The Court: All right; that will be done.

Mr. Hall: That is agreeable, Mr. Thody?

Mr. Thody: Yes; it is.

By Mr. Hall:

Q. Now, Mr. Thompson, it appears from Exhibit 6 in evidence that there were as of March 12, 1947, 742 open accounts, an open account being described as an account where Standard does not own nor have any lease on the property, and there is no contract or sublease of any kind between Standard and the independent dealer. You have in mind these accounts that we refer to as open accounts?

A. Yes, sir.

Q. Has it been the practice of Standard to sell gasoline to open accounts where the open account handled other competitive petroleum products?

A. Yes, sir.

Q. Has it been the practice of Standard to sell gasoline to open accounts where the open account handled tires, tubes, and batteries that were not obtained from Standard?

A. Yes, sir.

Q. Still speaking of these open accounts, has it been the practice of Standard to sell the open account Standard's lubricating oil where the open account was handling com- [fol. 1859] petitive gasoline?

A. Yes; we do. However, those numbers are not included in that 740. Those were open accounts to whom we supplied our gasoline.

Q. Has it been the practice of Standard to sell its lubricating oil to an open account where the open account was

handling tires, tubes, and batteries that had not been obtained through Standard?

A. Yes; that is the practice.

Q. Have these practices that we have been talking about, involving the open accounts, been practices engaged in for a number of years?

A. Yes, sir.

Q. Take the case of a dealer handling Standard gasoline, has it been the practice of those dealers where they were operating under a dealer agreement only to handle competitive tires, tubes, and batteries?

A. Yes, sir.

Q. I think the testimony already shows that it is not the practice of Standard Oil Company, or has not been the practice up until recently, to sell tires, tubes, and batteries to a dealer unless the dealer had an agreement TBA; am I right about that?

A. That is correct.

Q. And has that practice recently been changed?

[fol. 1860] A. On tires, tubes, and batteries a dealer must operate under a dealer agreement TBA, but accessories other than tires, tubes, and batteries, recently a policy was established whereby those accessories could be sold to any dealer handling our gasoline.

The Court: That is not the question you asked, is it? You want to know if the policy had been abandoned as to tires, tubes, and batteries.

The Witness: It has not been abandoned.

Mr. Hall: I was mistaken in putting the question.

The Court: All right.

By Mr. Hall:

Q. Then, if I get the situation, it is this: The practice that has been abandoned related to accessories other than tires, tubes, and batteries?

A. That is correct.

Q. But previously a dealer had to have a dealer agreement TBA in order to get the accessories other than tires, tubes, and batteries?

A. That is right.

Q. Now, Standard will sell the accessories other than tires, tubes, and batteries without a dealer agreement TBA?

A. Providing he handles our gasoline.

Q. Yes. In the last few questions I have asked you what the situation was with respect to a dealer agreement, a dealer having a dealer agreement. Is the same thing true [fol. 1861] with respect to a dealer with a petroleum products and equipment agreement?

A. Yes; the policy is exactly the same.

Q. Now I want to invite your attention to accessories and by "accessories" in the questions I am now going to ask you I am not talking about tires, tubes and batteries; I am talking about the other miscellaneous accessories. I think you said that the new practice was to sell those accessories to a dealer even though he did not have a dealer agreement TBA?

A. That is right.

Q. Formerly he was required to have a dealer agreement TBA before he could handle those accessories?

A. That is correct.

Q. If the dealer handles Standard gasoline will Standard, as a matter of practice, sell the dealer accessories even though the dealer handles competitive tires, tubes, batteries, and accessories?

A. Yes, sir.

Q. Is the same thing true even though the dealer handles competitive lube oils and greases?

A. Yes, sir.

Q. It has always been true, hasn't it, that as a matter of practice a dealer, whether he was under a dealer agreement or a dealer agreement TBA or a petroleum products and equipment agreement, was free to handle competitive accessories?

[fol. 1862] A. That is right.

Q. And that practice extended so far that a dealer under a dealer agreement TBA could handle competitive accessories 100 per cent if he wanted to, couldn't he?

A. That is correct.

[fol. 1863] Q. Now, either in your previous testimony or that of Mr. McClanahan, reference has been made, I think, to a policy of the company with respect to the number of stations that you would have in a given area or a given locality. What do you call that policy in the company?

A. Well, that's our primary representation objective.

Q. Representation objective?

A. Yes.

Q. What is the, or what has been the cardinal principle of that object? Would you call it balanced distribution?

A. Balanced distribution, to cover our market with the fewest possible number of outlets.

Q. Can you tell us what the reason is that you desire and attempt to cover the market with the fewest possible outlets?

A. The more concentration of business we can get through one outlet, the greater economy results in our distribution solicitation, and other items of expense in selling through the dealer trade. Besides that, there is the type of dealers that are attracted to our stations. They are more representative when the station has a substantial following and is not diluted by a large number of stations handling the company's products in competition. The only variance in the matter of economy is because of this balanced distribution we are also required to supply outlets in quite re-
[fol. 1864] mote areas as a service to the public. People traveling out of the metropolitan areas into back country have requirements for our products, and we are obliged to make those available to them, and, naturally, those types of deliveries are more expensive than normally.

Q. Well, is it your opinion, based upon your experience, that an unbalanced distribution would result in higher costs of distribution?

A. It would quite definitely, because we would have more outlets than necessary in one area, requiring all of the expense attendant to supplying them, and in other areas, where our advertising had created a demand for the company's products, we would have no outlet to serve them.

Q. Now, can you mention some of the factors that have a bearing upon determining a distribution of your dealers?

A. Primarily, it is a matter of competition. If we can get along with one station in a given community and attract business to that one outlet, that is most desired. If competitors offset that station and build in the vicinity, we are required to expand our distribution to meet that competition. Matters of highway changes and street relocations is another factor, and the shifts of population, particularly during the last few years, has become an important factor in determining the distribution pattern.

[fol. 1865] Q. As a matter of practice, to what extent are

these various agreements necessary in carrying out this balanced distribution?

Mr. Dixon: Just a moment. I object to that question, your Honor, as calling for a conclusion, and as irrelevant and immaterial.

The Court: Read the question, please. I think that goes too much into the question of economic advantage, which, as I view it, is not a matter subject to inquiry. There was no objection, and I think properly so, to the previous questions, which merely explained the method of controlling the distribution. But I think the present question relates to details dealing with economic advantages. However, I will have it read back to see if my impression is correct. Will you read it, please?

(The question was read.)

The Court: I think, if it is limited to what I think it applies to and it does not call for an answer which might go into the field which I have already mentioned, I will overrule the objection and allow the answer. If it goes too far, I will strike it. You may answer.

The Witness: May I have the question read, please?

The Court: We will have it read for your benefit.

The Witness: I got interested in listening to you, your Honor.

[fol. 1866] (The question was read.)

The Witness: As the community is equipped with a station handling our products, to secure this balanced distribution it is essential that that unit represent our company in that given area. Otherwise, we would be continuously going to the expense of solicitation, and painting, and other matters that are involved in switching around from one unit to another, and our distribution would not be——

The Court: In other words, what you mean, as I gather it, when you speak of necessity that that unit represent your company, you mean that it is your custom to bear down on your representations to that unit to the extent of having them represent all your products?

The Witness: That is right.

The Court: Those on the open list, as well as those on the restricted list?

The Witness: That is correct.

By Mr. Hall:

Q. Now, between 1931 and 1941 can you tell us what the proportion of stations were, devoted to the sale of Standard's products which represented new construction as compared with the total new construction of all stations?

Mr. Dixon: Object to that, your Honor, as irrelevant and immaterial.

The Court: Overruled.

[fol. 1867] The Witness: It is my understanding that during that period '31 to '41, Standard Oil Company constructed eight per cent of the new outlets that were constructed by all companies during that period.

By Mr. Hall:

Q. Do you know what proportion constructed by Standard was between 1942 and 1947?

A. That figure, I believe, was 8.7 per cent of all the outlets constructed.

Q. What is Standard's capital investment in its dealer stations today?

A. Roughly, 16½ million dollars.

Q. That is——

Mr. Dixon: If the court please, I object to that. That is going into purely the economic profit motive here, in justification, so-called justification, of these contracts, and I believe it comes clearly within the objection that it is attempting to set up an economic defense to these contracts.

The Court: No, in view of the fact that you have gone into the question of assistance and other methods of securing particular outlets, I think that the money interest is relevant. In view of the allegations of the complaint and the proof—not all of the allegations of the complaint, but the subject of the proof is the matter of consideration in cases of this character. This particular phase has been [fol. 1868] the subject of proof, and it may lead to inferences either way. On the one hand, a large amount of money invested may be the basis for an argument that through the money investment they secured control which, regardless of the meaning of written contracts, placed the particular dealers under such obligations or control that they hesitate to deal with others. Then it can lead, also, to

the argument that because of their interest, it is a proprietary interest which might warrant suggestions, as they were called by some witnesses Friday, as to what product should and should not be handled, for the common interest of both the operator and the company. So I think that because of that, and without in any way departing from the thought I expressed before, this inquiry is proper, limited to merely showing the amount of financial interest.

It will be overruled and the answer already given may remain.

Mr. Dixon: May I have the answer, your Honor?

The Court: It was: just about 16½ million dollars.

Mr. Dixon: Thank you.

By Mr. Hall:

Q. Does that include solely depreciable equipment and land?

A. That is correct; capital investment items.

Mr. Hall: Would your Honor entertain a motion for adjournment?

[fol. 1869] The Court: When you begin to watch the clock,—I was going to say we do not watch the clock here.

Mr. Hall: Well, your Honor, I am proceeding pretty rapidly, and I feel I can conclude this before the afternoon has gone very far. We are making very good progress indeed, and my predictions as to conclusion are getting more and more favorable, from the standpoint of the court, every minute.

Mr. Dixon: Off the record.

(Discussion between court and counsel as to adjournment.)

The Court: All right. 2:00 o'clock, gentlemen.

(Whereupon, at 12:15 o'clock p. m., a recess was taken until 2:00 o'clock p. m., of the same day.)

[fol. 1870]

Los Angeles, California,
Tuesday, May 25, 1948,
2:00 o'clock P. M.

ERSKINE D. THOMPSON (Recalled)

Direct examination (resumed).

By Mr. Hall:

Q. This morning, Mr. Thompson, you spoke of a three-party deal and, as I recollect your testimony, it was a case where Standard either owned the property or Standard leased the property as lessee from some third party and then made some arrangement with the dealer to occupy the property as its dealer, is that correct?

A. That is correct.

Q. In those types of deals is it common practice of the company to provide, either in a sublease to the dealer, or in some other form of agreement made to the dealer, that the dealer shall pay for his tenure of property at the rate of so much per gallon on the gasoline delivered by Standard Oil Company of California to the dealer?

A. That is right. That is generally prevailing in all the three-party deals.

Q. Is there a distinction which may be drawn, and speaking generally now between the locations of stations that are operated by employees of the company, on the one hand, and Chevron stations, on the other?

A. Yes. the stations that are operated by company em-
[fol. 1871] ployees are usually those in areas where they are exposed to considerable transient travel, whereas with the dealer, they are generally in neighborhood locations.

Q. Generally speaking, are the Chevron stations in locations where it would be easier for a competitor to obtain a comparable site than would be the case with employee-operated stations?

A. Yes, sir; very definitely.

Q. I take it that there are locations for service stations where, because of municipal regulations or ordinances, it may be difficult to obtain a new location. Are there such areas?

A. There are relatively few such locations, but there are a few.

Q. In those few locations, are those locations in which Standard has dealer stations as distinguished from company-operated stations?

A. No. I would say that to my knowledge there are no dealer stations located in that type of area.

Q. Is it true, then, that there are no areas where Standard has dealer stations where you can't find comparable locations from the standpoint of the location itself?

A. I would say that is correct.

Q. Based upon your experience over these years and your observations, has it been shown by experience; in your [fol. 1872] opinion, that a purchasing motorist does not necessarily select the dealer nearest his home or place of business?

A. I would say that he does not. The business enjoyed by service stations is, generally speaking, a mobile business. The motorist is driving around in his automobile and has access to a wide selection of different brands and different stations from which to buy. He is in his car and he does not have to park it to make his purchase. He has a wide selection, I would say.

Mr. Dixon: If the court please, I object to this line of testimony. I do not see that it has any relevancy or materiality to the issues of this case. I have not objected up to this point, but I think the——

The Court: I think the inquiry should be discontinued here. I do not think it is material to the issues as they stand now. It may well be that Mr. Hall prepared this testimony in view of some of the allegations of your complaint, such as, for instance, that they monopolize corners; but you have offered no testimony at all connected with geography, as well as to good corners or bad corners or anything else; so that that issue is not before the court.

Mr. Hall: Very well.

The Court: And this might bear upon that issue by showing that it is not the corner, but the customer who determines where he is going to go, depending upon where he finds himself.

[fol. 1873] Mr. Hall: That was exactly my question, your Honor.

The Court: We are not concerned any more with the

complaint. The complaint has disappeared in the proof. A lot of that complaint was not made the subject of any proof.

Mr. Hall: Yes, your Honor.

The Court: So you do not have to disprove what they did not prove.

Mr. Hall: Very well.

The Court: I make that statement because I have been checking for my own benefit the complaint to see what the evidence relates to, and that one paragraph is the one as to which this could possibly relate. But no proof has been directed to it and there is nothing from which to argue that they got the choice station or did not get the choice station.

Mr. Hall: Very well.

The Court: Because they did not offer to prove that they are better located than Texaco or anyone else. If you have traveled as much as I have over this coast, up and down, holding court everywhere from Portland down to Las Vegas, why, you can find that certain companies have certain habits. The Texaco, you always find a Texaco outside of town when you approach a large city, and you do not necessarily find others.

[fol. 1874] But we are not concerned with this because no proof was offered.

Mr. Hall: Yes, sir.

The Court: The proof is limited. This has simmered down to a very simple proposition, and that is the proposition that both of you cited in your trial brief, and it has been narrowed more than proven, and that is just this: Is this agreement illegal per se as the Government contends? If it is, then that ends it; if it is not, then the next question is: Does it unreasonably restrict competition under the Sherman Act, or does it result in monopoly or tend to substantially affect commerce under the Clayton Act. And that latter question is the question you propound, whether these activities, because of the way these products move in and out of the warehouses and tanks and others maintained, whether their activities are legal or the other. That is all there is to the lawsuit.

[fol. 1875] Mr. Hall: Very well, your Honor.

The Court: So let's keep it that way. The government at the present time cannot depart from the line laid down and they cannot reopen. I wouldn't allow them to reopen.

They have laid down the line of attack. Your answer to the attack must follow that line. Any other things that they have complained of as to which no evidence was produced is out of the case to all intents and purposes.

Mr. Hall: Yes, your Honor.

The Court: I realize, of course, in preparing the case you cannot know exactly how tightly the lines might be drawn, but now we know. So I don't think that the present inquiry should be pursued.

By Mr. Hall:

Q. Now, Mr. Thompson, reference has been made previously to competitors and competition. Does Standard, in order to meet that competition, offer to do anything for its independent dealers?

Mr. Dixon: I object to that question, your Honor, as to the form: Does Standard do anything in order to meet competition? I think that is a matter for the court to decide.

The Court: I will overrule the objection.

The Witness: Yes, we do.

By Mr. Hall:

Q. They install facilities?

A. That is correct.

[fol. 1876] Q. What do they install? Give us some example.

A. Well, we install modern pumps; we install tankage; we put in air compressors, hoists, restrooms; build buildings, canopies; install lubricating oil equipment, such as tanks and grease guns; pave driveways and approaches; paint and sign the stations.

Q. May I interrupt you there: Do you know approximately how much the company spent in 1947 in the painting of stations?

A. Something in excess of——

Mr. Dixon: We object to that, your Honor.

The Court: Overruled. I will allow it on the same ground I did this morning, to show the actual investment involved.

The Witness: In the year 1947 we spent in excess of

$1,000,000 in just paint alone, in painting stations, not counting the signs.

By Mr. Hall:

Q. Do they install air and water wells in the stations?
A. Yes, sir; drinking fountains.
Q. And special lighting?
A. Special lighting.
Q. Now, is it or is it not a fact that this matter of clean restrooms is an important factor with the company in meeting competition?
[fol. 1877] Mr. Dixon: I object to that, your Honor, clearly.

The Court: There we are getting into operations. I don't want to go into that, Mr. Hall. I don't think it is necessary. We are concerned with the merits only.

Mr. Hall: This is a part of the competitive picture, your Honor, in the things we do.

The Court: I know, but it isn't necessary for the determination of this case. The only—well, I think the reasons I have stated are sufficient.

By Mr. Hall:

Q. Does the company commonly make to its independent dealers an allowance for the maintenance of clean restrooms?
A. Yes, we do.

Mr. Dixon: I object to that, your Honor, for the same reason.

The Court: No, that is different. That goes to your own proof here, as to the inducements that are offered. You know, you made mention of the fact that they offer certain inducements, and I remember the first week of the trial when you talked so much about what, in the light of the exploration here, was "chicken-feed"; the fact that they forgave $6,000 out of a $10,000 loan. That I presume was material because it showed the inducements that were given to secure these outlets.

Mr. Dixon: Perhaps I misunderstood the question, your
[fol. 1878] Honor, but I thought he said something about clean restrooms.

The Court: No, he said: Do they make any allowance for

keeping up the clean restrooms? In other words, do they give them something, give them credit on the rent or the time they may take to maintain the restrooms.

Mr. Dixon: Oh, maybe I misunderstood the question. Could I have it read, please? If so, I am sorry.

(The question and answer were read.)

The Witness: (Continuing) Because we feel that the deterioration of one dealer's premises has an overall effect on the entire group, and recognizing that there is some aspect attached to keeping a uniformity of service, we make an allowance of a quarter of a cent a gallon on our regular grade gasoline to these type 1 accounts I referred to earlier, for the purpose of a restroom and maintenance allowance.

By Mr. Hall:

Q. Does the company issue to its dealers a book called "Lubriguide"?

A. Yes, sir.

Mr. Hall: I am not going to offer this in evidence, but I want him to describe it.

The Court: That isn't that big book that has every imaginary automobile shown in it, is it?

Mr. Hall: Oh, your Honor, I am not going to offer this in evidence.

[fol. 1879] The Court: I have seen one of those.

Mr. Hall: I just want him to describe it and I want to put in one or two sample pages.

By Mr. Hall:

Q. I hand you a rather large volume and ask you if that is the "Lubriguide" you refer to?

A. That is correct.

Q. Now, for the record, will you just briefly describe what is in that volume?

A. In the first place, this record is provided all Chevron dealers who are equipped to give lubrication service, and it comprises about 150 pages of general instructions and detailed instructions, as to how to take bearings apart and reassemble them without getting them on in a way that would prove hazardous. It includes charts for all makes and models of various automobiles for several years back,

including light delivery trucks, and the book is prepared by our research organization in collaboration with the automobile manufacturer, who specifically recommends lubricants manufactured by our company with the service periods that our research people have determined upon as being the most accurate for the best lubrication of the automobile. It is felt that an automobile is a costly and intricate piece of mechanism, and any oversight in the lubrication procedure could prove very costly and even dangerous in some instances to the motorist. That is all provided without [fol. 1880] charge to all dealers having lubrication facilities.

Mr. Dixon: If the court please, I don't want to again object to this line of testimony if your Honor feels you want to hear it or it is competent. But, as I understood your Honor's previous ruling, you felt that this type of testimony, although this is much broader apparently than the previous question, was perhaps relevant under paragraph 33 of our complaint. We suggest that it is in no way connected with those allegations, and if I may inquire just what the purpose of the testimony is, perhaps I can withdraw my objection. But on that basis I am objecting to it, on the ground it is irrelevant and immaterial even under paragraph 33 of the complaint.

Mr. Hall: Well, I think that under the decision in the Pick case, for example——

The Court: Pardon?

Mr. Hall: I think under the decision in the Pick case we have a right to show what the company does for its dealers in order to maintain its competitive position, and as far as this "Lubriguide" goes, the matter goes further than that. I can't develop it all by one question, of course, but I expect to show that these lubrication instructions, so elaborately furnished to the dealers, are geared and designed specifically for the handling of Standard Oil lubricants, and [fol. 1881] I think that has a very material bearing upon the issues.

Mr. Dixon: If the court please, I don't think there is any evidence in the record to prove that at all. Certainly this is no Pick case. There is no complex mechanism that requires the use of Standard greases only in order to make it work, and that was the basis, as I understand it, that the Circuit Court affirmed the ruling of the District

Court in the Pick case. I frankly do not see any basis under the issues and evidence introduced in this case to date for the relevancy or materiality of this type of evidence. But, again, this is a court of equity, and if your Honor is interested in it, we can go along with it.

The Court: I do not want to encumber the record with a lot of irrelevant testimony. I do not think, or, I will put it positively: I think that any inducement that the company makes is material, but any advantages which result to the dealer and indirectly to the public from the arrangement between the company and the dealers is not a proper subject of inquiry, because we are going back again to the question of economic advantage. We are not here to determine whether the facilities and the quality of oil, and the other things, were such inducement that even in the absence of such an agreement the same people might prefer to deal with Standard instead of another company. That is not our problem at all, because we are concerned only with the [fol. 1882] result of this understanding. It is agreed on both sides that as to dealer agreements, the purport of them, and the forms, even the latest version of 1944, as this witness testified this morning, contained that restrictive clause which bound the dealer to have his requirements supplied by the company, both as to the petroleum products and as to tires, tubes and batteries, leaving free choice, as Mr. Thompson testified this morning, as to other accessories other than those three mentioned. That is our fundamental problem. If the agreement doesn't have that effect, then the inquiry is immaterial. And if it has that effect, the inquiry is equally immaterial, but if this were the kind of a proceeding where there were no contracts in the case and some person had testified that their understanding of the conditions upon which they could obtain Standard Oil products were that they shouldn't buy from anyone else, then it would be material. It would be material to show, in contradiction of specific testimony, that generally there was an inducement other than that, to make them use these products rather than others. But we are bound here by not only the allegations of the complaint, but by the proof, and in checking the complaint at noon today, and that is what I was doing during the entire noon hour—I haven't left my chambers since you gentlemen left the court room—I noticed that while the evidence relates to certain practices, the

complaint throughout speaks of contracts, and that the [fol. 1883] prayer of the complaint, especially No. 3, which has the three subdivisions, doesn't use the words "artifices" or "acts," but uses "contracts" and seeks to forbid the company from executing or enforcing any contracts the object of which was to curtail dealing in products and, more specifically, giving the subdivisions (a), (b) and (c). They are clear in my mind because I have been working on them to check things. I am getting ready, and I always try to be ahead of you gentlemen, for your arguments. That being the case, I cannot see that any discussion of this character would be helpful at all because we don't want in this controversy to go into a discussion of the merits or demerits of the products or any inducements or any advantage that might accrue from dealing with one rather than another. And I fear that this inquiry is leading us into that.

Mr. Hall: I think that perhaps the difficulty now presented is a difficulty that goes deeper than that, if I may be heard briefly, your Honor.

The Court: I haven't said anything. All these lay people will get the impression that I am an awfully tough man to get along with. I hope I haven't given that impression, gentlemen. I may at times be emphatic, but this is not Friday, you know. On Friday my voice may sound more commanding than I mean to make it. This is only Tuesday. So I do not want to give the impression that I am prevent- [fol. 1884] ing you from arguing or discussing matters. As I have gone through portions of the transcript I have noticed that everybody has felt free to talk.

Mr. Hall: No, your Honor, I didn't mean to indicate you had been cutting me off.

The Court: In some instances I noticed that some of counsel even kept on talking after I got through ruling, and, of course, all good advocates do that. It is a hard habit to get over.

Mr. Hall: A part of this inquiry, your Honor, may raise a question which is a question which I would prefer to argue at the end of the case, but since it has come up, I might as well do what I can to clarify it here. When we were confronted with the plaintiff's complaint charging a violation of section 3 of the Clayton Act, in my own mind I had a great deal of difficulty in answering the question what is meant by "substantial"—"substantial lessening of compe-

tition" or creation of a monopoly. What was meant by that? What factual inquiry does that permit? I thought I had found the answer to that that is set out on page 57 of the printed brief.

I don't want to interrupt, your Honor,——

The Court: Go ahead. I am just making notes. Don't pay any attention to me. I can hear you very well.

Mr. Hall: I find that section 7 of the Clayton Act, which [fol. 1885] forbids a corporation engaged in commerce from acquiring the stock of another corporation, uses exactly this language which section 3 uses,—this language, that the effect of such competition may be to substantially lessen competition or to restrain commerce in any section or community. In other words, Congress used the identical language in Section 7 of the Clayton Act that is used in Section 3 of the Clayton Act, and Section 3 is the one we are concerned with here.

Then I find this case of International Shoe Company, reported in 280 U. S., 291. It was a case decided in 1930, and I recall attention——

The Court: That is the Shoe Machinery case?

Mr. Hall: Yes, it is one of those Shoe Machinery cases. It is set out on page 57 of my brief, your Honor.

The Court: Yes, I remember the case.

Mr. Hall: Now, the court in that case said:

> "Section 7 of the Clayton Act, as its terms and the nature of the remedy prescribed plainly suggests, was intended for the protection of the public against the evils which were supposed to flow from the undue lessening of competition.
>
> * * * * * *
>
> "Mere acquisition by one corporation of the stock of a competitor, even though it result in some lessening [fol. 1886] of competition, is not forbidden; the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree * * *; that is to say, to such a degree as will injuriously affect the public.'

[fol. 1887] Now, there was the genesis of our "injury to the public" theory, if it might be called that, in the defense of this case.

Your Honor, in a very enlightening discussion that we had last week, pointed out that in a number of cases economic benefit to the public may not be a defense. I realize that there are cases to that effect and that that is the law, but let us see where and in what instances that particular law applies.

We know that where there has been price-fixing, under the rule of the Socony-Vacuum case, where there has been price-fixing, then it would be folly, the price-fixing having been shown, for a defendant to step forward and say in defense, "Our price-fixing benefited the public; our price-fixing really resulted in lower prices to the public."

The court would not listen to him under the rule of the Socony-Vacuum case.

Now, take another case: Suppose we had a combination or conspiracy case where we start with that form of restraint, and there the conspiracy or combination being [fol. 1888] shown, the court would not permit the defendant later, in defense, to come in and say "Despite the combination and restraint we benefited the public in an economic way."

Now, all that is true. The Yellow Cab Company case cited by counsel the other day—no, not the Yellow Cab case—the case that your Honor cited, the Fashion Originators Guild case, was a perfect example of this where we start with a restraint and a monopoly, and that is shown, your Honor, and then the court says: Well, that being shown, you can't come in and show that you did something to economically benefit the public.

Let me call your Honor's attention to the language of Judge Hand in the lower court in the Fashion Originators case. He said: "We do not understand that a court will inquire into whether a combination benefits an industry when the means used are themselves unlawful." "Means used are themselves unlawful."

Now, your Honor will recall that in that Fashion Originators Guild case there was a boycott there, a combination of fashion designers, fashion manufacturers. They had a pretty tight combination there, a pretty tight conspiracy, and they boycotted any retailer and any manufacturer of textiles that dealt in copied patterns. Now, that was the Fashion Originators case.

In deciding that case, Mr. Justice Black said this, and I

read this to show you the type of case in which you can't [fol. 1889] produce "benefits to the public" as a defense:

> "But petitioners further argue that their boycott and restraint of interstate trade is not within the ban of the policies of the Sherman and Clayton Acts because 'the practices of FOGA were reasonable and necessary to protect the manufacturer, laborer, retailer and consumer * * * of original designs and had in fact benefited all four.' "

Let me pause there to point out that that was the contention in that case, that it benefited the public. And here is what Mr. Justice Black says in sweeping that contention aside:

> "* * * As we have pointed out, however, the aim of petitioners' combination was the intentional destruction——"

The Court: What page are you reading from?

Mr. Hall: I am reading from the Supreme Court opinion in 312 U. S. 457, and I believe that it is about 465 that the passage I am reading from appears. It may be 466.

The Court: All right.

Mr. Hall:

> "As we have pointed out, however, the aim of petitioners' combination was the intentional destruction of one type of manufacture and sale which competed with Guild members. The purpose and object of this com- [fol. 1890] bination, its potential power, its tendency to monopoly, the coercion it could and did practice upon a rival method of competition, all brought it within the policy of the prohibition declared by the Sherman and the Clayton Acts. For this reason,——"

Because of this monopoly, combination, boycott, intentional destruction.

> "For this reason,"

says Mr. Justice Black,

> "—the principles announced in *Appalachian Coals* v. *United States*, and *Sugar Institute* v. *United States*, have no application here. Under these circumstances

it was not error to refuse to hear the evidence offered, for the reasonableness of the methods pursued by the combination to accomplish its unlawful object is no more material than would be the reasonableness of the prices fixed by unlawful combination. * * *"

Now, that is a case which is clear, and let us set that to one side. Mr. Justice Black here recognizes that there may be another vital case, and I submit that is the type of case we have now before your Honor.

The Court: May I interrupt your a minute to say this? I in allowing you to go into the competitive situation by [fol. 1891] showing over the Government's objection No. 1, the sales of petroleum products by other major and minor companies in the field, in the area, rather, the sales of accessories, whether we limit it to the ones Mr. Thompson used or we take the primary ones, the tires, tubes, and batteries and other kindred matters which were the subject of all sorts of charts introduced last week, and relating to the comparative sales by other companies, and also by allowing you to show the number of outlets in the area controlled in some manner or other by other major companies, I have allowed you to lay a factual foundation from which can be determined whether, assuming that the effect of your own arrangements is to exclude others from supplying these things to Chevron stations, whether the ultimate effect is a substantial interference with the commerce or a monopoly, because ultimately the words "reasonable" and "unreasonable" and the word "substantial," like similar words we find in various statutes, are not abstract concepts. They are concrete concepts which raise a question of fact which the trier of fact must determine.

If I am permitted to go back to a decision of my own which, because it was written while I was in the appellate department of the Superior Court, has the effect of a final decision of a court of appeal, we had before us when I was in the appellate court department of the Superior Court a case of *People v. Clark*. It was a very important case be- [fol. 1892] cause it called, for the first time, for the interpretation of a provision in the statute relating to punishing children. We have a statute in California which was a dead letter until that case was tried and until that decision was rendered. I wrote the opinion for the appellate department of the Superior Court.

The statute says that any parent or any guardian or any teacher who shall inflict "unjustifiable" punishment upon a child shall be guilty of a misdemeanor. In that case a Glendale teacher had punished a child and she was prosecuted under the Act and found guilty, and she appealed and I wrote for the opinion the first interpretation of the Statute in California.

We were confronted with the proposition: What does "unjustifiable" mean? Should we adopt the common doctrine which says "unjustifiability" is to be determined by the parent or guardian, and so long as the punishment does not break a bone is justified? And they said: No, it could not have meant that because that would make the Statute meaningless. We held that the Statute meant something can be justified. To whom? Justified to a trier of the facts, a court or a jury.

So the same here, these words have a similar meaning. They call for facts from which the court may draw the inference as to whether or not the restraint is unreasonable, [fol. 1893], or whether or not it is substantial, and all the testimony you have introduced relates to that issue.

But the motives and inducements that may have entered into the mind of the individual dealer in weighing the benefits he could derive from one company as against those he can derive from another are not matters of consideration. These call for benefits which the dealer may have derived through dealing with one company rather than another, and are not in the nature of inducements of which I spoke earlier in the day.

Mr. Hall: Following the pattern of the International Shoe case which identifies the word "substantial," the court says, "substantial degree," and then it says: "That is to say, to such a degree as will injuriously affect the public."

Now, that was, as I have already pointed out——

The Court: That is not a question of proof. That is a conclusion to be drawn by the court on the basis of certain facts.

Mr. Hall: Well, may I submit this: If it be a question of fact, may we not, after laying the proper basis, call a witness and ask the witness what will be the result overall, not to the Standard Oil Company, but what will be the overall

result as far as the public is concerned if you have your way?

Now, I do not know a better way to do that than to bring in a qualified expert and, after proper foundation laid, ask [fol. 1894] him that question.

The Court: Oh, no; because that invades the province of the court. Then you have made this, which is practically pragmatical itself, the subject of expert testimony, and the rule in the Federal Court as to expert testimony is very, very strict, and even in the branches where it is allowed, we are allowed to disregard it, and even in the most extreme cases such as, for instance, in the War Risk Insurance cases, of which we try very, very many following the last war, even doctors are not allowed to determine the ultimate fact whether total and permanent disability has resulted. They may only give us facts to say whether, in their opinion, it would harm the person if he continued to work.

Mr. Hall: But your Honor is a step ahead of me on this.

The Court: Perhaps I am.

Mr. Hall: May I fill in an intermediate step that may alter that view?

Suppose we closed our case now, and then suppose we assume, as I take it we have a right to do under this International Shoe case, that the public, if the Government had its way, in a broad way would suffer detriment. Now, I do not think we have the proof in yet to show that, and the proof that I want to show is that the kind of distribution system that they are attempting to foist upon the west coast would be more expensive to the public. And I am sure your [fol. 1895] Honor, before you come to the ultimate question, should hear proof as to the cost of what the Government is trying to put over compared with the cost of the present overall system.

The Court: I think that might be a legitimate point to argue, but I do not think that the cost to the public of a decision which would forbid these practices enters into the matter, anymore than in the price-fixing cases the fact that the prices are actually fixed at a lower level than would otherwise prevail but for the practice. That was the holding in the Food and Grocery case.

Mr. Hall: Your Honor, see what we have in this case. We have contracts that your Honor has indicated you do not believe are illegal per se, that is, standing alone and

without more. If that be true, then we have to go the next step and determine whether there has been substantial lessening of competition or tendency to monopoly.

The Court: That is all.

Mr. Hall: That is true.

The Court: But the lessening of the competition is one thing and the effect of the lessening is another.

Mr. Hall: Yes.

The Court: I am allowi g you to prove the effect on the competition, but not the benefit, the benefit that flows from it or the evil that flows from it, because the Congress has [fol. 1896] said if it substantially affect the competition in the field or unreasonably affects it, then it is forbidden. In other words, Congress has assumed by this legislation to declare that certain practices are detrimental to the public. As a matter of fact a very strong argument could be made the other way, that the fact that the United States is the only country in the world which has sought to control business in this manner—England never tried to control it, the Continent of Europe never did. We are not talking about the present time, but in the past: Germany, which had about as expansive an economy as we have, never tried it. And years ago, a famous economist who was a professor, who was president of the University of Wisconsin, Professor Van Hise, wrote a book which he called CONCENTRATION AND CONTROL. That is one of the earliest and still one of the finest texts dealing with concentration of industry, power in the hands of industry, and what he advocated as sound economy is promotion of concentration and controlling it through other methods.

Well, the Congress of the United States has not followed the economist and has adopted this system, and the object has been stated very well. In fact, in some of my opinions I cite the object of the Statute from an opinion by the late Mr. Justice McReynolds in an early case, and that is to keep free for competition, thus achieving by competitive measure [fol. 1897] a degree of social benefits. Now, Congress having done that, an inquiry of what benefit may be derived is not germane to the subject at all and it doesn't matter what the court have said as to the benefit in strictly price cases, it applies to any benefit in cases arising from other restrictive practices. And that is why I think that this inquiry as to benefits which might accrue—because, if this

is followed to its logical conclusion, then you could put experts on the stand to say that if these practices are stopped, it would cost them money, either in added prices or reduction of services—that many of these would be abandoned and that the public would be harmed. But, for the reasons I have indicated, I think that inquiry is not material in this case.

Mr. Hall: I am afraid that maybe I have not made myself clear yet, and that is in drawing the distinction between these cases that bar out an inquiry into the economic injury or benefit and the case we have here. In a price-fixing case we have something; you start with something which is illegal. In a conspiracy case or in a monopoly case or in a combination case you start with something illegal, and the defendant comes forward and says: Well, I want to show economic benefit to the public; and the court says, "You can't do it." But you can't reconcile these other cases, that I hope for the opportunity to cite—you can't reconcile those cases upon any other theory than that where you do [fol. 1898] not start with something illegal. Where the whole question at issue here is whether these contracts are illegal or not, I say in determining that question you have a right to consider the public interest.

The Court: Well, the public interest only insofar as the Congress has delimited it, and that is unreasonable and unsubstantial. I think the words "injuriously affects the public" which are used in the Sloe case must be related. What is meant in that case is merely to say this: The law does not concern itself with trifling, as is said in one of the cases. Almost any action may constitute some monopoly under certain particular circumstances. In the patent case they have said that the patent itself is a monopoly. But when they say that it must injuriously affect the public it refers to the quantity of the restraint, whether it is substantial and whether it is reasonable or unreasonable, and those criteria are related to the extent of the injury and not to anything else. "Substantial" means something contradistinguished from "unsubstantial." It means something of size, as it were, relating to the entire area, and is concerned with a material instead of an inconsequential effect of certain restrictions.

And in that *in that* interpretation, the only matters that can be considered in determining whether the restrictions

are a violation of the law is to consider the effect of th[fol. 1899] practice in shutting out the competition in the particular field to others, the extent of that boycott, unless by its nature is such a character that it of itself completely shuts out the competition, which is what the Government contends in this case.

Mr. Hall: May I invite your Honor's attention also to the Pearsall case which your Honor cited in the San Francisco Electrical Contractors case? That was a case in the Seventh Circuit and the language that is quoted from that case is on page 62 of my brief.

> "Most of the witnesses unite in saying that in the handling of this product there is advantage to manufacturer, jobber, retailer, and the public in having a particular brand handled exclusively by one jobber in a given locality wherein he handles no similar product, ..."

That is all we are trying to show and that was apparently evidence which was admitted in that case. That, by the way, was a Section 3 of the Clayton Act case. It is the closest case in point to our case at bar of any of the cases that I have been able to find. 292 Fed. 720, and it is referred to on page 60 of our printed brief.

The Court: Yes. Let us get back. I think, gentlemen, we have expressed ourselves sufficiently. Let us get back to the question that is before the witness. Do you have the [fol. 1900] pending question?

The Reporter: No, your Honor. The other reporter has the question.

The Court: Let us take a recess. We will take a recess and then bring the question in so that we can get back here.

(Short recess.)

[fol. 1901] The Court: Now we will go back to the question before the witness.

(The question and answer referred to were read.)

The Witness: Yes, I think I answered the question, your Honor.

The Court: All right. Then there is nothing before the court.

Mr. Dixon: Oh, yes, your Honor.

The Court: A motion to strike?

Mr. Dixon: Yes, I rose to object, and I will ask that the testimony be stricken. I am not sure that is in the record, but it should be.

The Court: I will deny the motion and allow the answer to stand so far as it has gone, because it gives certain facts and not conclusions. I think we now understand each other about the further testimony. I think so far as it has gone it relates merely to inducements and gives certain facts from which the court can draw certain inferences, but I think you need not go beyond that, into the realm of conjecture as to whether it is detrimental or not detrimental. I will determine whether it is or is not detrimental in the sense that is permitted by the Acts under consideration. Proceed.

Mr. Hall: Then, as I understand it, your Honor's ruling has not foreclosed an actual showing——

The Court: No, along the lines given in the answer gen-
[fol. 1902] erally as to benefits to the public.

Mr. Hall: May I have the sheet which I now hand to the clerk marked as Defendants' Exhibit next in order, for identification.

The Clerk: Defendants' Exhibit WW, marked for identification.

By Mr. Hall:

Q. How many pages are there in that "Lubriguide," Mr. Thompson?

A. 150 pages, I believe I testified.

Q. I show you a sheet which has now been marked Defendants' Exhibit WW, for identification, and ask you if that is one of the pages of the "Lubriguide," which is a fair sample with respect to Packard and Plymouth automobiles of the instructions with respect to lubrication which the guide contains for dealers.

A. That is right. This is one of the charts that comprises the principal part of the book.

Q. Is it true that this chart, Exhibit WW, for identification, and other charts contained in the book are adapted peculiarly for the use of Standard Oil Company lubricants in automotive equipment?

A. That is correct.

Mr. Hall: I offer the document which has been marked Defendants' Exhibit WW, for identification, in evidence.

Mr. Dixon: I object to it, your Honor, on the ground [fol. 1903] it is irrelevant and immaterial.

The Court: For the purposes indicated, it may be received. Overruled.

The Clerk: Exhibit WW, in evidence.

By Mr. Hall:

Q. I show you another volume, Mr. Thompson, marked "Service Guide Atlas," and ask you if that is a volume which is placed by the company with its independent dealers.

A. That is correct; all dealers handling tires, tubes and batteries.

Q. Will you describe what the contents, in general, of that volume are?

A. Well, this is a book of 217 pages that is keyed by car make and model with the various accessory items; batteries, cables, fan belts, filters, and so on; and in the next section it provides procedures as to how to remove tires and replace them; how to install fan belts; how to patch tires; and the last section is the story of the qualities of Atlas merchandise.

Mr. Hall: I ask that the two sheets that I now hand the clerk be marked as Defendants' Exhibit next in order, for identification.

The Clerk: Defendants' Exhibit XX, for identification.

By Mr. Hall:

Q. I show you the sheets which have been marked Defendants' Exhibit XX, for identification, and ask you if [fol. 1904] those are pages taken from the book which you have just described, which are a fair sample of certain of the operations referred to in the book, for the purpose of enabling dealers to properly service cars with the equipment that the book refers to.

A. That is correct. This particular section deals with fan belts, and radiator hose, giving the specification and installation procedures.

Mr. Hall: I offer the document which has been marked Defendants' Exhibit XX, for identification, in evidence.

Mr. Dixon: Objected to on the ground it is irrelevant and immaterial.

The Court: Overruled.

The Clerk: Defendants' Exhibit XX in evidence.

By Mr. Hall:

Q. I show you another volume, Mr. Thompson, marked Chevron Merchandiser, and ask you if that is a book which is placed by the company with its independent dealers.

A. This book is provided to all type 1 Chevron dealers. It comprises 12 sections of 200 pages. It so happens that this book is in the process of development, and a few of the sections are not yet supplied to the dealers, but when complete it will have sections covering attracting customers, keeping customers, selling lubrication, selling tires, selling batteries,——

[fol. 1905] The Court: You are not in competition with Dale Carnegie, are you?

The Witness: ——selling accessories, Standard Oil products, giving the various qualities and grades of products for the information of the dealer, business forms, advertising, credit cards, and credit travel service and maps, and general management.

Mr. Hall: I ask that the sheets which I now present to the clerk be marked as Defendants' Exhibit, for identification, next in order.

The Clerk: Defendants' Exhibit YY, for identification.

By Mr. Hall:

Q. Mr. Thompson, I show you the documents which have been marked Defendants' Exhibit YY, for identification, and ask you if that is the first section in the book which you have just described.

A. That is correct. It is the section entitled "Attracting Customers."

Mr. Hall: I offer the document which has been marked Defendants' Exhibit YY, for identification, in evidence.

Mr. Dixon: Objected to on the ground it is irrelevant and immaterial.

The Court: Overruled.

The Clerk: Exhibit YY in evidence.

By Mr. Hall:

Q. Does the company publish and issue to its independent dealers a circular at intervals known as the "Roundtable"?

[fol. 1906] A. It does.

Mr. Hall: I ask that the sheets which I now present to the clerk be marked as the Defendants' Exhibit next in order, for identification only.

The Clerk: Defendants' ZZ, for identification.

By Mr. Hall:

Q. I show you the sheets, Mr. Thompson, which have just been marked Defendants' Exhibit ZZ, for identification, and ask you if that exhibit comprises four issues of this "Roundtable"?

A. That's right; typical issues.

Q. How often is that "Roundtable" published and issued to the dealers?

A. About twice a week; single sheets, generally.

Mr. Hall: I offer in evidence the sheets which have been marked Defendants' Exhibit ZZ, for identification.

Mr. Dixon: Objected to on the ground they are irrelevant and immaterial.

The Court: Overruled.

The Clerk: Exhibit ZZ in evidence.

By Mr. Hall:

Q. Does the company ever experience difficulty in getting its dealers to exhibit its merchandise, or do some of Standard dealers put Standard merchandise under the shelf or in the woodshed?

A. That is one of our greatest problems, the so-called [fol. 1907] woodshed problem. Tires, by the nature of the stock, must be kept away—as nearly as possible away from direct sunlight and heat, and are generally stored in racks as far removed from exposure to the sunlight as possible. And batteries likewise must be maintained on charge, and they, too, at any rate when exposed to the elements,—well, our problem is to get samples of that merchandise out where by power of suggestion the dealer can move it to the customers that come into his station. That is one of our biggest problems.

Q. What does Standard Oil Company of California spend in a year in training its independent dealers?

Mr. Dixon: I object to that question, your Honor, as immaterial.

The Court: Overruled.

The Witness: The material, such as has just gone in evidence, would cost approximately a quarter of a million dollars per year, and the salary and traveling expense of merchandisers, who train dealers directly and who make use of this material in the field, probably another half a million dollars, making a total of three-quarters of a million.

By Mr. Hall:

Q. Does Standard Oil Company supply to its independent dealers a booklet containing a bookkeeping system for the purpose of keeping retail accounts?

[fol. 1908] A. That is correct.

Q. I will show you a booklet entitled, "Bookkeeping System, Retail Accounts, Standard Oil Company of California," and ask you if that is the book.

A. That is the book, yes, sir.

Q. Will you describe for the record the contents of that book and the purpose of the various sections?

A. Well, in addition to this book, there is a daily report that the dealer makes up for his own information, from which he enters to this monthly listing sheet. The book complete has 105 pages in it, and there is a monthly listing of sales of various commodities, and another section for bringing forward on a yearly listing sheet, a page for cost of sales inventory, another section to calculate profit and loss, another section for balance sheet, net worth, depreciation and capital account, and a pay roll record.

Mr. Hall: I ask that the sheet which I now hand to the clerk be marked, for identification, as Defendants' Exhibit next in order.

The Clerk: Defendants' Exhibit AAA, marked for identification.

Mr. Hall:

Q. Mr. Thompson, is any of the contents of the book you have just described prepared for the purpose of transmission to the company itself, or is it solely for the dealer's

own convenience in preparing his tax returns and for other [fol. 1909] purposes?

A. It is not made for any purpose of submission to the company. It is only for the dealer's own record. We find that the dealers generally have to have some form to keep their tax records, and that type of thing; and we have tried to provide a simple system which they can operate themselves.

Q. I show you a sheet which has now been marked as Defendants' Exhibit AAA, for identification, and ask you if that is the daily report sheet which is provided to the dealers for their convenience, as indicated in a previous answer to one of my questions?

A. That is the sheet. They keep this for their own record and for the purpose of posting in the ledger.

Mr. Hall: I offer in evidence the sheet which has been marked Defendants' Exhibit AAA, for identification.

Mr. Dixon: Objected to on the ground it is irrelevant and immaterial.

The Court: Overruled.

The Clerk: Exhibit AAA in evidence.

By Mr. Hall:

Q. Does Standard Oil Company provide sales and advertising aids to its dealers?

A. Yes, sir.

Q. Can you give me some examples of that?

A. Well, we provide them with direct mail follow-up [fol. 1910] material on lubrication work, and public orders, and various forms that are utilized in the lubrication of automobiles. We also make available to them at a low cost other forms of direct mail material for publicizing their stations in their neighborhoods; also stationery forms of various kinds, billheads, envelopes, calling cards, and we provide mats and cuts for use in newspapers and handbills which the dealer may have printed up, publicizing his outlet, and typical layouts that he can follow in making up his own advertisements.

Q. Did you mention travel maps?

A. No, that is one very important phase of the sales promotional activity. We have a very complete map service, which the dealers, which is available to the dealer for dis-

tribution to his customers, and also a routing service which plans vacation trips on request of the dealer.

Q. You mean a customer of the dealer will ask to have the dealer advise him as to routes to follow and places to go on vacation?

A. That is right. And the Travel Bureau will compile a map and routing service, and either mail it directly to the customer, to the dealer's customer, or to the dealer for personal delivery to the customer.

Q. What did Standard Oil Company spend last year for general advertising of its products handled through dealer stations?

[fol. 1911] The Court: In this area?

Mr. Hall: No, all together, your Honor.

The Court: All right.

Mr. Hall: I don't think the company goes outside of the seven western states.

The Court: I see.

Mr. Dixon: I object to the question, your Honor, on the ground it is irrelevant and immaterial.

The Court: Overruled.

The Witness: Our expenditures in 1947 were in excess of three and a half million dollars for general advertising, such as newspapers, billboards, and radio. That is in addition to their advertising that has been described here as individual dealer advertising.

By Mr. Hall:

Q. Now, will you describe briefly, and in a general way, the facilities which are provided for caring for the motoring public at dealer stations handling Standard Oil products?

Mr. Dixon: If the court please, I object to that on the ground it is irrelevant and immaterial.

The Court: Yes, I think that is immaterial and that is foreclosed. I think so far as showing the service that he gives to the customers that we have had enough testimony, and I do not believe I will allow you to go into that field. [fol. 1912] Mr. Hall: May I state my purpose, your Honor?

The Court All right.

Mr. Hall: This was for the purpose of showing—we have shown now what Standard Oil Company does in general for dealers, and we would like to show what that results in, that enables the dealer to do for the motoring public.

The Court: I will sustain the objection.

By Mr. Hall:

Q. You have mentioned, and I think Mr. McClanahan mentioned, Mr. Thompson, that Standard Oil Company will not sell its gasoline to what are called split pump accounts. Do you recall that testimony?

A. That is correct.

Q. Will you tell the reasons why Standard Oil does not and has not, as a matter of practice, sold gasoline to split pump accounts?

A. The primary reason is one of prevention of substitution.

Q. What has been your experience with respect to substitution?

A. Well, while the split pump policy was in force a few years ago, it was necessary to withdraw it from a great many accounts as a result of their substituting competitive products for our products, and in many instances making such sales on the company's credit cards.

Q. You mean something other than the Standard Oil [fol. 1913] Company products would be charged on the credit card?

A. That is correct.

Q. The company has a system of credit cards, does it not, which it issues to customers?

A. Yes, sir.

Q. And on presentation of the card, the customer may obtain petroleum products and tires, tubes and batteries at any Chevron station?

A. Yes, sir.

Q. Now, tell us just what it is that, in your experience, you have found that a dealer would do in the way of substituting one gasoline for another at a service station, how he would accomplish it.

A. Well, the pumps generally would be on a single pump block, and a customer attracted to the station—if our colors and signs were displayed, a customer desiring our products would be attracted to the station, and in pulling up to the

pump block would naturally expect to receive the product that was generally identified in that unit, and it was very easy for the dealer to take the hose from some other pump, and without being observed by the motorist put the gasoline in the tank.

Q. Was there a practice in that connection that is known in the parlance of the trade as "long-hosing"?

A. Long-hosing is the term that was always applied to that.

[fol. 1914] Q. How did it get that term?

A. Well, they usually had a pretty long hose on the gasoline they probably chose to push, and they could reach almost any pump block area with a hose from this pump.

Q. Now, in your experience, has it appeared that there is danger of substitution in the case of lubricating oil at stations?

A. That is quite right. In fact, that was the birth, I think, of canned oil as a prevention of the substitution which occurred quite generally. It was difficult to tell after the oil was in the tank without chemical analysis as to just what was in there. It all looks like lubricating oil.

Q. Now, while we are talking about this policy of the company not to sell to split pumps, does the painting of the station in one color scheme have any relation to that policy?

Mr. Dixon: If the court please, I think that this line of testimony is also clearly immaterial and is objectionable.

The Court: Yes, I think I will sustain the objection. I think you are going too far afield now. The objection is sustained.

By Mr. Hall:

Q. Would a split pump system of retail distribution for service stations, if adopted generally, be a more expensive distribution system than the system of distribution involved [fol. 1915] in a system where a single station is supplied by a single supplier?

Mr. Dixon: I object to that on the same grounds.

The Court: Yes, that calls for a conclusion of the witness. I will sustain the objection.

By Mr. Hall:

Q. Reference has been made in the testimony, Mr. Thompson, to a Union Oil product known as TX-5, a lubricating oil. Will you tell us, was that a heavy duty oil?

A. It was an oil especially manufactured for heavy duty trucks, over-the-road haulers.

Q. When that oil appeared on the market, what did Standard do for the purpose of meeting that competition?

A. Well, that oil was put out by the Union Oil Company, and was very aggressively sold and promoted to the trucking industry; and it was something new at that time in the type of oil, and there was considerable demand for it at truck stations along the highways, and at our own truck stations, of which we have forty-four. They had some demand for that product due to the direct selling efforts of the Union Oil Company with the truckers themselves, and there was some fuel business in jeopardy, so several of our truck stations handled that oil to supply that demand.

Q. What did Standard do to meet the competition, if anything?

[fol. 1916] A. Well, we were at about that time launching upon a new product of our own, which was, in every respect, at least comparable in quality and price to Union's new product, and when that product was available a very strenuous effort was made on the part of our salesmen calling on trucking accounts to win them back to our brand, and in order to accomplish that we determined from our truck stations the names of the truckers who were currently buying the product, and put forth every possible effort to sell those truckers our own new oil.

Q. In other words, you went to the truckers direct?

A. That is correct.

Q. Now, in your experience, what percentage of service station customers buy tires where they buy gasoline?

A. It is my belief that less than one-fourth of the motorists buy their tires in the stations where they buy their gasoline.

Q. Well, you express that opinion generally, and not with particular reference to Standard Oil stations?

A. That is right. I think that is the general situation throughout all gasoline outlets.

Q. At the typical Chevron station, how many grades of lubricating oil does the dealer handle?

A. Well, he handles at least three grades of each of the three brands we sell.

[fol. 1917] Q. That would be nine grades all together?

A. As a minimum.

Q. If handled in bulk, that would be necessarily stored in tanks or drums?

A. In what is generally termed as highboys.

Q. What does a highboy hold, in volume?

A. There are two sizes; one 30-gallon and one 60-gallon.

Q. Does Standard experience any difficulty with its dealers in prevailing upon the dealer to observe the distinctive Chevron station color scheme——

Mr. Dixon: I object to that. Pardon me.

The Court: Let him finish his question.

Mr. Dixon: Yes.

By Mr. Hall:

Q. —by installing signs that do not conform to the color scheme?

Mr. Dixon: Object to the question, now, on the ground it is immaterial and irrelevant.

The Court: I will sustain the objection. I think we have already in evidence Exhibits relating to this color scheme used, and I think that is sufficient. I will sustain the objection.

By Mr. Hall:

Q. As a matter of experience and practice, has the color scheme of the Chevron stations been found to be an important factor in the marketing of its products?

[fol. 1918] Mr. Dixon: Objection to that, your Honor.

The Court: The objection is sustained.

Mr. Hall: I ask that the two photographs which I hand to the clerk be marked as one exhibit as Defendants' Exhibit next in order, for identification.

The Clerk: Defendants' BBB, marked for identification.

By Mr. Hall:

Q. Now, I show you the photographs, Mr. Thompson, which have been marked, for identification, as Exhibit BBB, and call your attention to the top photograph and ask you

if the building depicted in the top photograph is the same building as depicted in the lower photograph.

A. That is correct. The change in appearance was accomplished through the addition of a canopy. There is also a different name appearing here for the reason that the old sign had never been changed. It is the same account and the same garage.

Q. So that the second photograph, that is the photograph bearing the name "Larry Hewer" shows the station after Standard had done certain work upon the station for the purpose of converting it to a Chevron station?

A. That is correct.

Q. In other words, these pictures are a before and after comparison; is that correct?

A. That is right.

The Court: Not a before and after taking. Let me take [fol. 1919] a look at the "new look."

Mr. Hall: I beg your pardon. I didn't hear your Honor.

The Witness: His Honor wants to look at the "new look."

Mr. Hall: I offer in evidence the photographs which have been marked for identification.

Mr. Dixon: Those are very nice pictures, your Honor, but I object to them on the ground they are irrelevant and immaterial. On examining the pictures, your Honor will notice that both of them, although Mr. Hall said it was before and after, show that, as appears from the signs, they were Chevron stations at both times.

Mr. Hall: Oh, no, they do not.

Mr. Dixon: One says, "Standard Dealer."

Mr. Hall: It says, "Standard Dealer," but that is not a Chevron station.

The Court: I think it bears upon the testimony.

The Clerk: Admitted, your Honor?

The Court: It may be received.

The Clerk: Exhibit BBB in evidence.

[fol. 1920] By Mr. Hall:

Q. Those pictures that have been marked that are now in evidence as BBB, are they typical of what occurs between the time the Standard takes over a station and the time that Standard puts a dealer in that station?

A. I do not believe I quite understand your question, Mr. Hall.

Q. Well, I will reframe the question. Do these photographs——

The Court: Do they depict the change that takes place when you walk in?

The Witness: It so happens that this station here was served by the company in the before and the after picture. It was known as a Standard dealer previously, before the conversion to the Chevron arrangement in late '45 and early '46. At the time we made the conversion we established the new color scheme, the new sign arrangement, endeavored to modernize and clean up the station, remove extraneous coca cola signs and one thing and another, trying to make that look like an inviting premise; and that is typical of the conversions that took place at that time.

The Court: All right.

By Mr. Hall:

Q. Is it a fact that Standard distributes to dealer stations many different brands of accessories—and I am not talking now about tires, tubes or batteries—many different brands of accessories that are not Atlas products?

[fol. 1921] A. That is true. Some of them which even compete with Atlas products, such as Mac's-it auto polish, for example.

Q. In your experience from your observation what are the reasons usually given to a salesman by a dealer when the dealer does not want to buy a given product offered by the salesman to the service station?

Mr. Dixon: Object to that question.

The Court: Yes; objection will be sustained.

By Mr. Hall:

Q. When you were previously called as a witness by the Government you were asked to give from memory the proportion of the various brands of lubricating motor oils that are sold at Standard dealer stations, and I am referring to RPM and Standard Penn and Zerolene.

A. That is correct.

Q. And I think, in justice to you, Mr. Thompson, you said at that time that it was pretty much a guess, is that right?

A. That is correct.

Q. Since then have you ascertained the exact percentages of those products which were sold through dealer stations during the year 1947?

A. I have.

Mr. Hall: I ask that the sheet I now hand the clerk be [fol. 1922] marked as defendants' exhibit for identification next in order.

The Clerk: Defendants' CCC for identification.

By Mr. Hall:

Q. I show you a sheet which has been marked Defendants' CCC for identification and ask you if that sheet shows now, and correctly, the proportions of RPM, Zerolene, and Standard Penn sold through Standard's dealer stations during the year 1947?

A. That is correct.

Mr. Hall: I offer into evidence the sheet which has been marked CCC for identification.

The Court: It may be received.

The Clerk: CCC in evidence.

By Mr. Hall:

Q. When Standard leases from a third-party lessor any station site which is subsequently occupied by a dealer is it a common practice to lease it from the owner of the property upon a rental computed at so much a gallon upon a total gallonage passing through the station or sold through the station?

A. That is correct. However, two-thirds of the leases where the company has the head lease are based on cents per gallon rental.

The Court: You pay that to the owner?

The Witness: To the owner, the owner of the property on a third-party lease.

[fol. 1923] Mr. Dixon: I am sorry. May I have the last question read, your Honor, and the answer, please?

The Court: That is that three-cornered deal.

Mr. Dixon: Yes.

Mr. Hall: It is a three-party deal, your Honor.

The Court: What is that?

Mr. Hall: It is where Standard owns property and leases it from a third party.

The Court: I am glad you bring that out, because I was going to ask that question. I had it in my notes. It was not quite clear from this morning how the arrangement works. All right; read the question and answer.

(Question and answer read by the reporter.)

The Court: And those, of course, differ with your locations, the percentages differ?

The Witness: The amount. It is usually on a cent a gallon or three-quarters or a cent or a cent and a half a gallon. It varies as to the value of the property. However, there is some uniformity for the reason that the larger production stations, on a cents per gallon basis, would carry a higher rent.

The Court: Would carry a higher rent?

The Witness: That is right.

By Mr. Hall:

Q. What can you tell us, Mr. Thompson,——

The Court: Just one minute, will you? It is so long [fol. 1924] since you have testified as to this matter covered in this Exhibit CCC that I want a little more details. What does this Exhibit CCC cover?

The Witness: It covers all of the lubricating oils sold through Chevron dealer outlets during the year 1947; and it is the ratio, the percentage of each of the three brands to the total sold. The other day——

The Court: That includes the entire group?

The Witness: The entire three oils which we sell through dealer channels. The other day I was asked to get that.

The Court: Tell me again—I am not very good at figures—but tell me again what this percentage is. Is it of the total oils?

The Witness: Of all of the lubricating oils we sell through dealer channels. In 1947, 69.2 per cent of it was our brand RPM; 15 per cent was our brand Zerolene; and 15.8 per cent was our brand Standard Penn.

The Court: So this 100 is merely a total of which this is a split of your own products?

The Witness: That is right. I missed the guess the other day.

The Court: All right, that is all right.

By Mr. Hall:

Q. Mr. Thompson, can you tell us about the dealers' margin of profit on lubricating oil that is Standard's lubricating oil as compared with the lubricating oil of [fol. 1925] Pennzoil, Quaker State, and Valvoline?

Mr. Dixon: I object to that question.

The Court: Yes; the objection is sustained. We are not here for comparative profits. I am visiting with your witness. I told him you were giving him a work out here.

Mr. Hall: The work out is done as far as I am concerned, your Honor. You may take the witness.

The Court: All right.

Mr. Dixon: Thank you, Mr. Hall.

Cross-examination.

By Mr. Dixon:

Q. Mr. Thompson, who is the largest marketer of petroleum products, that is, of gasoline, oils, lubricants at retail outlets in the western area, do you know?

A. Through dealer outlets?

Q. Through retail outlets in the western area.

Mr. Hall: You are asking the entire western area as a unit, counsel?

Mr. Dixon: That is right.

A. I really haven't that figure, Mr. Dixon. I could tell you, I believe, on dealer outlets.

Q. Have you ever made it your business to determine what the position of Standard was in that market?

A. Of course, my responsibility is limited to dealer-operated stations and I have the figures at hand upon the [fol. 1926] dealer end of the business. But, to combine the two and compare with competitors whose sales, of course, are not available through any source to retail outlets, I could not give you that figure.

Mr. Hall: Would you permit a question, Mr. Dixon?

Mr. Dixon: Certainly.

Mr. Hall: Are you referring just to dealer outlets or are you including Standard Stations?

Mr. Dixon: I am first including Standard Stations along with dealer outlets. I assumed that you might be familiar with that.

Q. Are you familiar with it, Mr. Thompson?

A. Only in a general way on the company's business, but I am not at all familiar with the volume that moves through retail channels of competitive products, because there is no source for that information.

Q. Did you have occasion at any time to look at any of these charts that your very able counsel for Standard Oil Company submitted in evidence in reference to Standard's position?

A. That position, I think, is based upon the total available, rather than upon the retail available.

Q. Directing your attention to the two charts VV and YY, I believe, do you know what the position of Standard was in the retail outlet market in those two areas shown in [fol. 1927] those two charts?

Mr. Hall: Just a minute. You want, of course, to show the charts to him, don't you?

Mr. Dixon: I thought he would be familiar with them. Of course, if he has not seen them before, we would like him to see them.

My error. It is Exhibits V and Y, not VV and YY.

A. That is the Bay area, San Francisco Bay area, and Los Angeles Basin survey. Yes, sir.

Q. Have you ever seen those before?

A. I have seen these charts; yes, sir.

Q. Will you state what the position of Standard is in that market with reference to the total sales at retail outlets in those two areas?

A. In the Los Angeles Basin, based upon the estimates of sales of the various competitors at bona fide stations, we have 2.43 per cent of the total.

Q. Talking about the total sales of retail outlets of the Standard Oil Company to its stations and dealer stations.

A. You mean now to include Standard Stations with that? I didn't understand your question.

Q. Yes.

A. We have, between the two—I will have to make a computation here—11.14 per cent.

[fol. 1928] Q. Was there any company that you see represented in those charts that sells a greater percentage than that in those two areas, the total amount sold at retail outlets?

A. General Petroleum has 11.06 which is very close. Their sales, I believe, are primarily through dealer outlets, which compares with our 2.43.

Q. Have you ever had occasion to have any survey made of sales made of the company through its company-operated and retail dealer outlets in the western area as to the relative percentage of its sales through said outlets in the western area?

A. I have not had such survey made. It is my impression that the figure Mr. McClanahan gave you the other day is somewhere between 12 and 14 per cent, would probably be my best estimate.

Q. And that that represents the largest percentage of the total sales made by any one company through retail outlets in the area, does it not?

A. I couldn't tell you that because we have no way of knowing what percentage of competitors' gallonage moves through retail outlets. We have no source for that information.

Q. So the only estimates you have ever made of the competitors' gallonage anywhere in the western area is that indicated by those two exhibits, V and Y, is that correct?

A. This is the only study that I know of that has been [fol. 1929] made which comprises the number of units and gallonage estimate, because of the size of these two markets.

Q. Do you know what the percentage is of the total sales through retail outlets at Standard with reference to any of the other companies selling through retail outlets in the western area?

A. You are again talking about retail business?

Q. That is right.

A. I don't know what our competitors sell through retail outlets. There is no source for that information, Mr. Dixon.

Q. There are no figures available anywhere so far as you know to determine it?

A. There is no figure. The only figure that we have to work on is the figure, the taxable gasoline figure, which includes sales to agricultural, industrial, and we have no way for breaking that out except for our own company.

Q. All right. Now, Mr. Thompson, from the survey which you had made of competitor outlets in the western area, that is, the retail outlets, what company, if any, has a larger total amount of such retail dealer outlets in the western area than Standard?

A. I did not say we ever made a survey of the western area. These are the only two surveys I am aware of.

Q. I am talking now about a survey of the number of [fol. 1930] outlets, the dealer outlets in the western area.

A. The total number of outlets, you have reference to the listing of outlets, existing outlets as shown by that evidence earlier in the day?

Q. That is right.

A. Is that what you have reference to? Now, what was your question, may I ask? I was not quite clear on it.

Q. Well, very briefly, does any company selling gasoline and petroleum products through retail dealer outlets in the western area have any more outlets than Standard has, according to your survey?

A. I had never compiled it on that basis. It could probably be determined from the records that are available there, but I don't know that, Mr. Dixon.

Q. What was the purpose of determining or getting that information, Mr. Thompson?

A. That is a report that is regularly used in our branches for keeping track of the movement of competitive business, and made from estimates that our salesman and branch managers make in the field; and it was merely gathered together in one compilation as to numbers of accounts only. I do not believe our detail showed the volume of business involved.

Q. I am talking now only about the number of outlets, Mr. Thompson. From that survey was it not indicated what [fol. 1931] companies that you called or described as being in competition with Standard were operating such dealer outlets, or whose products were being sold at such dealer outlets?

A. I can't recollect that that form had the listing sep-

arate by companies. It may have. If I might look at the exhibit, I could tell that, because that is the only thing we have.

Q. Your records would clearly show that, wouldn't they?

A. Not any records that I have.

Q. I am talking now about the records that are available to you as a result of this survey.

A. There is no record available as a result of that survey except what is in evidence, Mr. Dixon, and I do not believe that includes the number of stations separated by companies. I would have to look at the exhibit to be sure, but I don't believe it does. I think it was a total by our districts, and that is the only result that the survey developed.

Q. In other words, do your district managers who secure that information for you just fail to list the names of the companies selling petroleum products in competition with your company in their district?

A. Our request did not ask for that information. They probably could have made it available had we asked for it.

[fol. 1932] Q. It is the fact, isn't it, that they probably did have that information in the records?

A. That is, sir.

Q. But you did not ask for it?

A. It may be entirely possible, but we did not ask for it.

Q. Could you get it?

Mr. Hall: Mr. Dixon, you know as well as I do that that information is here available to you in the wooden box on the table over here.

Mr. Dixon: That is why I am asking this witness. It does not appear from there that the information that I am asking him was contained in those records.

A. Well, the information that I understood you were asking about had to do with the number of outlets operated by the various companies which was to have resulted from a survey that we made; and the only survey we made did not disclose that information. The basic data, as Mr. Hall says, is in that box. It may be or it may not be possible of assembly. Certainly it would not be possible to assemble it as of a year ago because I stated this morning in my testimony that those records are currently. Deletions are made and additions are made out of a current record that has been going on for years.

Q. So I take it from your testimony that you do not [fol. 1933] know, then, whether there is any company in the business of selling gasoline to petroleum outlets in the western area that has more retail outlets at which their products are sold than the Standard Oil Company?

A. Well, I could not say for a certainty, Mr. Dixon.

Mr. Hall: Well, again, Mr. Dixon, are you taking the entire area?

Mr. Dixon: That is right.

Mr. Hall: Or part of the area?

Mr. Dixon: The entire area.

A. I could tell you about these two areas that we made it a point to investigate specifically on the point that you are making.

Q. Yes; I understand that. But I am asking now about the area, Mr. Thompson, is all.

A. Yes; but other than that I haven't any knowledge of that figure.

Q. And, as general manager of dealer sales you have never made it your business to determine the relative position of Standard in the retail outlets—well, withdraw that. As general manager of Standard sales for the Standard Oil Company in the western area, you have never made it your business to determine what the relative position of Standard Oil Company of California was with reference to its relative position in the total of dealer outlets in the [fol. 1934] western area, the total number of dealer outlets in the western area?

Mr. Hall: Now, just before you answer that, may I ask counsel whether you are including in that question Standard Stations and Chevron stations?

Mr. Dixon: Yes; I am including Standard Stations and Chevron stations, both.

The Court: I do not know the materiality of it.

Mr. Dixon: I will limit it, then, your Honor.

The Court: He says he does not have it.

Mr. Dixon: I will limit it to dealer stations, then.

A. Well, as to numbers, Mr. Dixon, that has never particularly been of concern on a basis of the seven western state study, and I actually have never developed it on that basis. From the standpoint of volume, yes; I have already

made an estimate as to where they stood there, and in the San Francisco and Los Angeles Basin, where we do have facts that were developed, those are self-evident.

Q. That is why I asked the question. I understood that you combined the Standard Stations with your dealer stations in making both of those surveys.

A. In these two here we separated them. You asked me to combine them.

Q. Now, Mr. Thompson, I notice in the Exhibit BBB that you labeled that "before and after," as I recall it, those two pictures. Was there any difference in the agreements [fol. 1935] that were in use by the operator of the station before and after, as you described it, in that exhibit?

A. I would say generally not, except that in that particular exhibit—I am guessing now from the appearance of the unit—I would say that we probably installed a canopy there to modernize that station, and there might have been some change in those agreements. But, as a general thing, that conversion from the Standard dealer to the Chevron dealer was made without any change in agreements. It was merely a conversion of appearance.

[fol. 1936] Q. In other words, there wasn't any difference between the agreements governing the relationship between the Standard dealer and Standard Oil Company or Standard Stations, Inc., and a so-called Chevron dealer and Standard Oil Company, was there?

A. Not as a general thing. I said in this particular case here there may have been because the pictures indicate the addition of some modern equipment, which may have occasioned some change in agreement.

Q. By the way, do you know what the profit was, that is, the net profit of the Standard Oil Company on the sales of all of its products to dealer outlets in 1946?

A. No, sir.

Q. Do you make it your business to find out whether that section or division of the Standard Oil Company is operating at a profit?

A. No, we don't work our arrangements on that basis. I haven't those figures, the profit figures, available to me, Mr. Dixon.

Q. So you are not in a position to state to the court whether the division of the Standard Oil Company under your supervision made a profit or suffered a loss as a re-

sult of its operations in selling and distributing its petroleum products, and tires, tubes and automotive accessories to dealer outlets in the year 1946?

[fol. 1937] The Court: Don't answer that question. I will not allow you to answer the question. I am not interested in profits. If you are going into profits, we will be going into a field that may involve many matters, and that isn't material.

Mr. Dixon: The only reason I asked, your Honor, and I withdraw the question, is because of certain questions which were asked by counsel in relation to advertising expenditures, and so forth.

The Court: That is not the point. They were not trying to show whether it was expensive or not, but were just trying to show the method of merchandising, which you brought in yourself by showing inducements, and, once more, the fact which you stressed so much, that they had forgiven some moneys which were advanced. So that I allowed them to show the inducements, or, to use the pet phrase of luncheon clubs, that they were giving "service," a lot of service. That is all there is to it. We are not going into any question of profits. The Standard Oil Company is not in business for its health. No company of that size is; at least, I do not assume that any is. They would not stay in business very long if they didn't make a profit, and the question of a profit is not condemned by any law I know of. Our economy is based on a profit system, and I assume they made a profit. Whether the particular department did [fol. 1938] or did not make a profit is not material. Undoubtedly, it is possible that one division may not make a profit. I know in one instance in a case before me it was shown that they suffered a loss in certain of their activities, but the reason was that the particular establishment they had would be profitable more or less to the entire system, although it wasn't profitable as to that particular division. But we are not interested in that.

Mr. Dixon: I agree, your Honor.

The Court: Very well.

Mr. Dixon: I will proceed along other lines.

The Court: All right.

By Mr. Dixon:

Q. With reference to these two-thirds of the leases that you stated were within the three-party classification deals that you described, which contained a gallonage rental based upon the number of gallons of gasoline sold, those leases also contained minimum rental provisions, Mr. Thompson, did they not?

A. In some instances they do. However, where the minimum is established, it represents generally a higher cost rental to the company; and, in other words, the more we sell, the more rental we pay, and then after sales fall off, we still have to pay a relatively high rental, so we try, if we can, to negotiate leases without the minimum. We do try, however, to get maximums in there which, by the same [fol. 1939] token, the landlord tries to exclude. There are many of them that are flat gallonage cents per gallon rent.

Q. Now, coming down to the change-over to the Chevron station type of arrangement that you have testified to, I believe you testified that that took effect in 1945, was it,—or, 1944?

A. We started it on a trial market basis in '45, and late that year, before we were able to get materials, and from that time until mid '46 we had practically completed the conversion, yes.

Q. What was the general purpose of that change-over from a Standard station, so-called, to a Chevron station?

A. Well, to begin with, these Standard dealers, we called them, were very closely identified with Standard stations, insofar as their color scheme was concerned, and even their sign identification was similar. The competitors had been for many years advertising and promoting independent dealer operation, telling why the public should buy from the independents, the small businessman, and notwithstanding the fact we had 6,000 odd independent dealers, the public was unaware of that fact, and we found by no other means than to completely change the appearance of the station were we able to segregate as between the two. That was the birth of that idea.

Q. I take it, then, from your testimony, that one of the [fol. 1940] purposes was to establish the Chevron dealer as an independent businessman; is that correct?

A. That is correct.

Q. But the agreements, as such, were not changed in sub-

stance, were they, at that time? I mean Government's Exhibits 1 through 5?

A. If I recall those agreements correctly, the dealer agreement, the dealer agreement TBA, and the petroleum products and equipment agreement, those agreements were not changed in substance.

Q. And the distributor agreement, also?

A. No, we did not have a distributor agreement in use at the time we started the conversion. They had been eliminated in 1944 and supplanted by the TBA agreement.

Q. Now, going back, rather briefly, to the lease and agency agreement, former type of arrangement you had, I believe you testified that was superseded by the dealer agreement, that is, Government's Exhibit 1,——

A. That's right.

Q. —in about 1938; is that correct?

A. That is right.

Q. What was the change in substance, if any, between the lease and agency agreement and that represented by the dealer agreement, which was put into effect in 1938?

A. I believe I testified, Mr. Dixon, when I was on the [fol. 1941] stand earlier in this case, that I was not intimately associated in that end of the business in 1938; that the only change that I am aware of is the matter of change in corporate structure. Prior to '38 these leases, as I understand it, were signed in the name of Standard Stations, Inc., and at about the year 1938 the agreements, while negotiated by Standard Stations, were entered into under the name of Standard Oil Company.

Q. Well, from your knowledge of the business, can you state to the court whether there was, in fact, any change of substance between the agency arrangement and that represented by the dealer agreement which supplanted the Government's Exhibit No. 1 in 1938.

A. Well, all I can say, I was close enough to the picture to know from a matter of practice there wasn't any change in the method of operation of the stations or the company's dealings with their dealers at that time. As to the legal agreements, I am not familiar with that.

Q. Now, directing your attention to Government's Exhibit No. 3, I believe you testified that the petroleum products and equipment agreement supplanted these dealer agreements in 1944; is that correct?

A. No, it was added to.

Q. It was added to?

A. Let me clear my point on that, Mr. Dixon.

[fol. 1942] Q. All right.

A. Your exhibit number—what did you say?

Q. No. 3.

A. That is what? What is the title?

Q. Petroleum products and equipment agreement.

A. That was just an additional type of agreement that was initiated in 1944, and it did not take the place of the signed on one agreement and some on the other. dealer agreement. In subsequent deals, some of them were

Q. For the purpose of the record and in aiding the court, can you state what difference, if any, there is in substance between the dealer agreement, Government's Exhibit No. 1, and the petroleum products and equipment agreement, Government's Exhibit No. 3?

Mr. Hall: Now, you are asking him for the difference in language between two agreements. They are in evidence. I object on the ground that it calls for a conclusion of the witness, no proper foundation laid, and not the best evidence.

The Court: I will sustain the objection. I think you may ask him if there was any change in the practices generally.

By Mr. Dixon:

Q. Was there any change in the practices represented by that agreement, that is, the petroleum products and equipment agreement, against any of the other agreements used [fol. 1943] prior to that time?

A. No change in the practice between that and the dealer agreement.

Q. That is right. Now, when the Standard Oil Company first began to sell tires, tubes and batteries,—I believe that was in 1932 or '33, was it?

A. In 1931 they started to sell them through their company-employee-operated stations.

Q. When did they start to sell them through their lease and agency agreement, or what subsequently became the dealer outlets?

A. Well, as I understand it, they didn't sell tires through their lease and agency agreements. That was the reason for the introduction of the authorized distributor's agree-

ment in 1934. It was my understanding that that is the year. While I was not associated with that phase of the business at that time, it is my understanding that in 1934 they started to sell through dealers on the distributor agreements.

Q. That is tires, tubes and batteries?

A. Tires, tubes and batteries.

Q. Under the distributor form,——

A. Yes, sir.

Q. —Government's Exhibit No. 2?

A. If that is the exact number, yes, sir.

[fol. 1944] Q. And was there any change in practice of the company when the dealer agreement TBA form, which you have testified came into general practice in 1944?

A. Well, I came into the picture just as the TBA dealer agreement came into being, and, so far as I know, there was no change in the actual operation; I mean in the procedure of dealing with our dealers as between those two forms.

Q. In other words, the practice was substantially the same?

A. I would say that, yes.

Q. Under the distributor agreement and the dealer agreement TBA?

A. I would say that.

Q. Now, under the distributor agreement or dealer agreement TBA, I believe you testified that the Standard Oil Company never made any effort to determine the amount of accessories which would go to dealers under those agreements. Is that correct, Mr. Thompson?

A. I don't understand what you mean by "never tried to determine the amount." If you mean that we tried to push the sale of accessories, we did not do that. We naturally tried to sell our accessories.

Q. As I understand your testimony, and if I am wrong, don't hesitate to correct me, you testified under these agree-
[fol. 1945] ments until very, very recently anyone who had a distributor's agreement, or, anyone would have to have, put it that way, a distributor's agreement or a dealer agreement TBA to buy any accessories from the Standard Oil Company or through the Standard Oil Company; is that correct?

A. You were talking about accessories other than tires, tubes and batteries?

Q. That is right.

A. Yes, sir, you are correct, up until recently.

Q. And that was true under both agreements, was it not?

A. Of the agreements that remained of the distributors. There was only a few remaining.

Q. Yes. That was the practice of the company, was it not, under both agreements, that is, the distributor's agreements and the dealer agreements TBA, until it was recently changed?

A. Well, I can only now go back as far as the instigation of the TBA agreement. As far back as that started, accessories other than tires, tubes and batteries, were not sold to any dealers except those having TBA dealer agreements. Now, the distributor agreement—I don't know what took place prior to that, but we functioned in the same manner with the remaining distributor agreements, which were at that time eliminated.

[fol. 1946] Q. When did you change this policy and permit anyone, I mean any of your dealers, to buy accessories through or from the company without entering into a dealer agreement TBA or a distributor's agreement?

A. Well, that policy has been considered for some time, but owing to the short supply during the war it wasn't possible to supply the dealers with TBA agreements with an adequate supply of accessories, so as soon as the accessories were available, which was sometime since the first of the year, and I have forgotten the exact date when it went out, but it has been within the last couple of months, I would say that the program was announced as it relates to accessories other than tires, tubes and batteries, and only to dealers handling our gasoline.

Q. But prior to that time, as you have testified, no dealer could purchase any accessories from or through the Standard Oil Company, under either the distributor agreement or the dealer TBA agreement, unless he had signed one or the other of those agreements?

A. Your question rather confuses me. You mean a dealer without a TBA agreement or a distributor agreement could not buy accessories?

Q. That is right.

A. That is correct. Those were the instructions issued to the field organization.

[fol. 1947] Q. Now, I believe you testified that Standard does not sell any gasoline to any dealer who sells any other type of gasoline; that is correct, isn't it?

A. That is our policy and instructions to the field.

Q. How long has that been the policy of the Standard Oil Company?

A. Well, at least 10 years.

Q. Now, these stations or these places where you only sell the gasoline to them, I believe you have referred to them as open account stations; is that correct?

A. Yes, they are included among the open account.

Q. Now, after you have sold gasoline to such an outlet, do you subsequently endeavor to change them over to dealer outlets for the company products?

A. You mean to try to get other products in there?

Q. Yes.

A. Yes, that is our stock in trade, is to sell you the full line.

Q. And you are quite frequently successful, are you not, in subsequently turning these open account outlets into either dealer or dealer TBA accounts?

A. I wouldn't know the number, but we are reasonably successful, I would say, in that. We get a number of them on tenure.

Q. Now, do you now sell any of your so-called Atlas line [fol. 1948] of products, represented by tires, tubes and batteries, to any station or any retail outlet that does not sell Standard gasoline?

A. No, we do not.

Q. In other words, to sell any of the Atlas brand of TBA products or automotive accessories, a dealer outlet must also handle Standard gasoline; is that correct?

A. Atlas and any other line of accessories that we——

Q. Sell?

A. —sell, and in addition to handling our gasoline, in the case of tires, tubes and batteries must also be signed on a TBA contract.

Q. Did I understand you to testify that the company-operated stations, that is, the stations that are operated by employees hired and under control of Standard Oil Com-

pany are generally in less favorable locations than the dealer outlets?

A. I didn't say that.

Q. All right. I just wanted to correct the record.

A. I didn't say that.

Q. What is the fact with reference to that, if you know, Mr. Thompson?

A. The fact of the matter is that that segregation does not enter into our decision as to which type of operation it is. There is a certain type of trade that Standard Stations [fol. 1949] are in a position to serve that quite frequently are in these locations that I referred to as being locations where possibly restrictions might prevent a great deal of development of service station units, and such as we have very frequently are turned over to company operation. We also have company-operated stations in residential areas. It is the pattern of balanced distribution that involves both types of marketing plan.

Q. In other words, that generally, then, is not a fact, is it? I mean, that stations operated by the Standard Oil Company itself are generally better situated from the point of view of securing business than the so-called Chevron dealer outlets?

A. I don't think I could say that. In the first place, may I correct that Standard Stations operate these stations and not the Standard Oil Company.

Q. In other words, I take it you don't know anything about that type of operation, do you?

A. No, I don't. I do want to explain——

Q. Well, did I understand——

Mr. Hall: Just a minute, let him finish, please.

The Court: Yes, let him finish his explanation.

The Witness: I just wanted to say I do know enough about the locations to say that there is no attempt to put Standard Stations in all the choice locations that occur in [fol. 1950] the usual development of outlets, nor in the worst locations; and, likewise, that applies to the dealers, because that is the thing I am most interested in. But there is a pattern of distribution that involves both types of outlets, and it could very well occur that one unit would be in one favorable location, and another type of unit in another.

By Mr. Dixon:

Q. Did I understand your testimony correctly to the effect that company-operated stations are frequently turned over to Chevron dealers?

A. I wouldn't say frequently, but there has been—we have had very many turned over. I think the question you have reference to, Mr. Dixon, was that in establishing Chevron stations that we have taken a great many station managers, who are employees of Standard Stations, and made them Chevron dealers because they wanted to branch out in business for themselves, and the Chevron dealer provided them with a good opportunity to do that.

Q. And what consideration, if any, determines whether or not the company shall relinquish a company-operated station to a dealer?

A. Well, as I say, that happens very infrequently, when a company station is turned over to a dealer. They have their pattern of development, and we have ours. But when it does occur, it is probably an occasion where, and I will go back to the testimony I gave earlier, that we try to cover [fol. 1951] our market with the fewest possible number of outlets, and that there may be an opportunity to serve a locality with the clientele of company-operated stations with one less station than we have got, and that, in turn, might be turned over to a Chevron dealer who could then compete with the competitors who have been promoting the sales of their products through independent dealers for many years.

Q. So you do regard, then, the fact that the Chevron dealer is an independent dealer as of import in determing the ultimate sales that may or may not be made to any Chevron outlet?

A. He is an independent dealer, but we feel a responsibility to him in trying to help him——

Q. Yes, I understand.

A. —to be a good dealer.

Q. Yes. Now, in connection with your testimony, I believe you stated that the Standard Oil Company spent a million dollars or more in painting stations in 1947. How much, if any, did the company spend of that amount on company-operated stations?

A. I don't know, Mr. Dixon. They keep them well painted, too, but there would be a lesser number, I would say probably, oh,——

Q. But you don't know?

A. I don't know, but probably one-fourth or one-fifth, [fol. 1952] probably something of that sort.

Q. Now, these exhibits that you testified were given to the dealers, like Exhibit WW, XX, YY and AAA, are those the same documents that are given to the operators of your company-operated stations, that is, your employees?

A. Some of them are; for instance, the lubrication guide. I can't correlate your numbers there with the exhibits, but I assume that the lubrication guide is one that you mentioned.

Q. Exhibit WW is the lubrication chart.

A. The lubrication guide, yes.

Q. That is the same chart, is it not, that goes to your company employees, operating company stations?

A. It goes to Standard Stations employees, although I believe it has a different cover on that. Other than that, the basic data is the same.

Q. Now, do I understand from your testimony concerning Exhibit WW that the two automobile companies that you mentioned recommend only Standard Oil greases for their cars?

A. No, I didn't say that.

Q. I just wanted the record to be clear on that.

A. No, the recommendations that I referred to were not a sanctioning of the product as a product. It is a case where our research laboratories, knowing the character of our oils, the crudes from which they are manufactured, and [fol. 1953] the service characteristics of the oil, together with the motor car manufacturer's engineers, who know the requirements of the automobiles, get together and prescribe certain grades and weights and frequencies of lubrication. But my statement was not intended to say that the car manufacturers recommended——

Q. I think you have answered my question on that point, Mr. Thompson. Thank you very much.

Now, I believe you also testified that the company — by the way, how much did the Standard Oil Company spend for advertising in 1947; do you know?

A. I gave that figure as approximately something, I think, in excess of three and a half million dollars.

Q. Is that the total amount spent by the Standard Oil Company for advertising all its products?

A. That is the amount spent in the seven western states for the products marketed out here through general media, that is, newspapers, billboards, radio, direct mail, and that sort of thing.

Q. That includes products, petroleum products, sold by the company, that is, the Standard Oil Company, through its company-operated outlets?

A. That is, as I understand it, it includes only those products that are sold to the motorist, gasoline, lubricating oil, and——

[fol. 1954] Q. I am not sure that you got my question.

A. Maybe I didn't.

Q. I say, does that amount also include the advertising of the products of the Standard Oil Company that are sold at the Standard Oil Company-operated stations?

A. Oh, yes, there is no way of distinguishing them.

The Court: He didn't distinguish between that, as I understand it.

Mr. Dixon: I just wanted the record to be clear, your Honor. I didn't understand whether this witness said this amount was used only to advertise Chevron——

The Court: Oh, no, he didn't so limit it.

[fol. 1955] By Mr. Dixon:

Q. I believe in connection with this so-called split pump testimony that you have referred to the fact that the reason the company did not sell split pumps was because of the long-hosing practice. I am not clear what that was, but from your testimony, as I understood it, it was the fact that the dealer operating that station would have a long hose that would go into a tank or from a pump other than that of Standard and would put that gasoline rather than Standard's gasoline into the tank when the motorist asked for Standard gas. Am I correct in that?

A. Well, the point—that is partially correct. The problem is that we, when we get a station painted and signed, it becomes our package and a direct tieup with the advertising that we had; and its purpose of being so displayed is to attract any other people who want to buy our product, and they get in there and another pump on the block that maybe does not engage—the supplier does not engage in that amount of advertising and makes some other inducement to

sell his gasoline, it is quite easy for the dealer to make that substitution.

Q. By the way, let me ask you this question: How many of those instances of long-hosing practice came to your personal knowledge and experience?

A. Well, the long-hosing deal was somewhat serious in one instance I recollect, minor in another. I think Mr. [fol. 1956] McClanahan testified the other day that one instance where the sales through our pump exceeded greatly the delivery that we had made, which was one method of checking. I know of a number of instances—I would not know how many, but it has been so many years ago—where competitive gasolines were sold to motorists who had come in ostensibly to buy Standard's gasoline.

Q. May I interrupt you?

A. Yes, sir.

Q. To ask you this question, in the interests of hurrying on? Can you state to the court any such instance by name of location?

A. No; I could not, Mr. Dixon. It has been too long ago.

Q. That is what I wanted to get from you.

A. It has been too long ago.

Q. This TX5——

The Court: But your entire object was to prevent another product being palmed off as yours; isn't that correct?

The Witness: That is correct.

By Mr. Dixon:

Q. This practice of long-hosing that you described, the gasoline actually came from a pump and the tank that is purported to come from, didn't it?

A. I don't believe there was any switching of pipelines, if that is what you mean.

[fol. 1957] Q. That is right.

A. I think it was merely a case where the customer drives into the pump block and disregards the pump that he was receiving the product from. I don't know of any case where there was any mixing, although there have been cases reported where the dealer himself would pump the product.

Q. To your knowledge?

A. Not to my personal knowledge.

Q. In other words, I am talking now of what you know about it personally.

The Court: He said he did not know. All right.

By Mr. Dixon:

Q. Mr. Thompson, you testified concerning this TX5 oil as being competitive with your RPM, is that correct?

A. It is RPM heavy-duty type of oil, not the regular RPM.

Q. It is a fact, is it not, as a result of the efforts of Standard Oil Company in connection with that situation of your Chevron dealers selling that TX5 at Chevron outlets, that the Standard Oil Company got the name or names of the customers that were using and asking for and purchasing that oil, didn't it?

A. Our truck station operators were very glad to give that information to us, because they found it more desirable to buy our lubricating oil but were not salesmen enough [fol. 1958] themselves to sell the truck operator, who probably didn't have anything to do with buying the oil, anyway. And it was necessary for us to get the names of these truckers and go directly to the principals of the trucking concerns and convince them that we had a product worthy of their purchase.

Q. But it was because of the fact that you found out that these stations, Chevron stations, were selling this TX5 to customers that wanted it that you got the names of those customers; isn't that a fact?

A. Well, I presume that would be the case, yes.

Mr. Dixon: That is all.

The Court: Any redirect?

Mr. Hall: I don't think so, your Honor, but pardon me just a minute. That is all, your Honor.

The Court: All right; step down.

Mr. Dixon: I was a little longer than I expected to be, your Honor.

The Court: What?

Mr. Dixon: I was a little longer with the examination than I expected to be, your Honor, but I tried to shorten it up.

The Court: That is all right. Considering the length of

the direct examination, I think you were very moderate. Tomorrow at 10:00 o'clock.

[fols. 1959-1960] (Whereupon a recess was taken until 10:00 o'clock a.m. of the following day, Wednesday, May 26, 1948.)

[fols. 1961-1962] In the District Court of the United States for the Southern District of California, Central Division

Honorable Leon R. Yankwich, Judge Presiding

No. 6159-Y—Civil

United States of America, Plaintiff

vs.

Standard Oil Company of California and Standard Stations, Inc., Defendants

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Reporters' Transcript of Proceedings

Los Angeles, California
Wednesday, May 26, 1948

Appearances:

(As heretofore noted.)

[fol. 1963] Los Angeles, California, Wednesday, May 26, 1948. 10:00 A. M.

Mr. Hall: Mr. Garrett.

Robert W. Garrett, called as a witness by the defendants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?
The Witness: Robert W. Garrett.
The Clerk: And the spelling of your last name?
The Witness: G-a-r-r-e-t-t.

Direct examination.

By Mr. Hall:

Q. What is your present occupation, Mr. Garrett?

A. I am the secretary of the Appropriations Committee of the Standard Oil Company of California.

Q. Will you tell us of your academic training and experience with particular reference to training in the field of economics as it relates to petroleum products marketing?

A. I attended grade school and high school in Walla Walla, Washington, majored in economics in high school. I attended Whitman College in Walla Walla, graduated with an AB degree in 1929 with a major in economics.

After graduation I applied for a fellowship, a teaching fellowship, at the University of California and was offered a fellowship for the succeeding year. I took graduate work [fol. 1964] under this teaching fellowship for two years at the University of California, working toward the Ph.D., Doctor of Philosophy degree. At the end of the two years I left the academic field to take appointment with the Standard Oil Company of California. I did not complete my Ph.D. work, although I had taken practically all of the necessary graduate courses.

After employment with the company I took graduate seminars in the evenings for two years. Then with the Standard Oil Company, I first was employed at the Richmond refinery in the engineering division of the manufacturing department, worked on general studies, cost, time, inventory control, and was transferred to the home office in San Francisco about a year later, also in the engineering department, the general engineering department of the company; and worked there for about a year and a half in studies of distribution, procedures for departmental activities, income tax work, and then I was transferred—we called it the general office. It also became the comptroller's department of the company; worked in some general analytical studies for a short period of time and then was part of a new function that was created for reviewing appropriations.

"Appropriations" is simply a term for expenditure request covering capital expenditures of the company, the improvements, modernizations, additional facilities.

[fol. 1965] Q. May I interrupt you there? Would that include capital investment in retail dealer outlets?

A. Yes; it includes the capital investment in all retail dealer or company-operated outlets. In other words, it covers all of the departments of the company and all capital investments of the company.

That activity has been carried on. I have been engaged in it more or less—I would say "more," because except for about two years I have been constantly engaged in that type of activity since 1935.

My work has quite definitely pointed all these years toward the analyses of the marketing problems, and particularly the very numerous service station expenditure problems; and others whom I have been associated with have been more specialists in the technical aspects of the business, that is, the refining or some of the engineering problems that come up. I have endeavored to specialize in the marketing aspects. In that connection I have had occasion to work with many studies on costs of marketing, costs of distribution. I have engaged in making some of them myself, personally traveling in the field, making studies of the costs of distributing gasoline through service stations and through other types of outlet.

[fol. 1966] Q. In that cost research have you had occasion frequently to examine into all factors that might have a bearing upon your costs?

A. I believe that's true.

Mr. Hall: I ask that the sheet I now present to the clerk be marked with the Defendants' letters next in order, for identification.

The Clerk: Defendants' Exhibit DDD, marked for identification.

Mr. Hall: I have one for your Honor, if you desire it.

The Court: All right.

Mr. Hall:

Q. I show you, Mr. Garrett, a sheet that has been marked, for identification, as Exhibit DDD, and ask you if you prepared that sheet.

A. Yes, I had that sheet prepared.

Q. What is it designed to exhibit?

A. It shows the minimum average installation costs for installing at a service station one or two pumps and the

underground tanks and necessary lines that go with it to make an installation to handle one grade of gasoline through a pump. It shows the costs of a small tank, the 550-gallon tank, and a larger tank, a 1000-gallon tank.

The Court: How is that computed? Over a period of time?

The Witness: No, it is supposed to be a normal figure, [fol. 1967] a current figure of costs in an average situation. It would vary by locality, but is fairly typical of costs we would incur.

The Court: But at what date?

The Witness: Within the last month. It is a current figure.

The Court: It is a current figure?

The Witness: Yes, sir.

The Court: What would the figure be if you had taken last year's basis, say at the end of last year?

The Witness: It would be somewhat lower.

The Court: It would be lower?

The Witness: Yes, because costs have been rising.

The Court: Well, we always take judicial notice of that.

Mr. Hall: I ask that the sheet which I now present to the clerk be marked with Defendants' letters next in order, for identification.

The Clerk: That is Defendants' Exhibit EEE, marked for identification.

By Mr. Hall:

Q. I show you the sheet which has been marked Defendants' Exhibit EEE, for identification, and ask you if that was prepared at your direction, Mr. Garrett.

A. That is correct.

Q. What is that graph or chart designed to depict?

[fol. 1968] A. That chart shows the relationship between the amount of product delivered at one time and the cost per unit—this is expressed in cents per gallon—of making that delivery. It reflects—it is a typical curve; that is, almost a mathematical function of a type of operation where you have a very large fixed cost and a relatively small variable cost. The costs of delivery of the product to the service station are made up, as I say, of two basic parts; the fixed cost that represents the cost of filling a truck, get-

ting it to the service station, getting ready to make the delivery, that is, sticking the tank and finding out how much of the product is now in the tank, making out a delivery invoice, making the collection from the service station, getting ready to dump and getting ready to leave. Those are fixed costs and they are standard whether they leave 100 gallons or 1,000 gallons at the service station. The variable cost is simply based on the time it takes to pour out of the tank truck a given number of gallons, and that is a function more of the flow rate of the truck. In fact, it is entirely the flow rate of the truck. So that figure increases at a substantial rate, depending upon how many gallons you deliver, but the fixed costs are so high that when you deliver small quantities, as this chart brings out, the costs rise very rapidly.

Mr. Dixon: If the court please, I have listened to this [fol. 1969] line of testimony now for some time——

The Court: Speak a little louder, please. I can't hear you.

Mr. Dixon: Thank you, your Honor. I say, I object to this line of testimony. As I have endeavored to understand or to speculate as to the purpose of its being offered, it appears to be relevant only on some economic theory that the defendants may have concerning the cost of delivering their product to a station in connection with the price at which the product is sold to the consuming public at the station. I submit that this type of testimony is irrelevant and immaterial to any issues in this case, and I object to it on that ground.

The Court: The objection is overruled. I am not going to allow any testimony regarding the effect of this arrangement on prices, because I have already said that I consider it immaterial for two reasons; first, that this is not a price-fixing case and, in the second place, it appears that the unreasonableness of the restraint under the Sherman Act and the substantiality of the restriction under the Clayton Act are not affected by the price at which the product is sold to the public. But I think this is material to show the relationship to the so-called independent dealer. It is quite apparent from the line of questioning of the government's witnesses, and also the cross examination, that it is sought [fol. 1970] to show that in reality these station operators did the bidding of the Standard Oil Company. I cannot tell

at the present time what effect such testimony would have. The evidence so far isn't limited merely to the effect so far as freedom to purchase is necessary, but also to give the effect as to the manner of conduct of the station; and not only on that score, but also on the general question before us, the services rendered to the individual operators other than the mere delivery of the goods are material as showing the true relationship of the parties, and that shows the reverse of the picture presented by the government's testimony, namely, that they expended large sums of money in order to carry into effect this exclusive feature of the contract for the mutual benefit of them both. Limited to that issue, which has a bearing upon the problem before the court, I think this testimony is admissible, and it is along the same lines as the testimony given yesterday as to the general expenditure for painting the stations and the like. The objection will be overruled.

Mr. Hall: I offer in evidence the documents which have been marked as Exhibits DDD and EEE.

Mr. Dixon: Objected to on the ground they are irrelevant and immaterial.

The Court: Overruled.

[fol. 1971] The Clerk: Defendants' Exhibits DDD and EEE in evidence.

Mr. Hall: Now, in the questions that I am going to put to the witness now, I shall try not to entrench upon your Honor's ruling of yesterday and today. I have in mind your Honor's statement at an earlier stage that an offer of proof is, of course, unnecessary to the questions or exhibits or the line of inquiry intended.

The Court: That is right.

Mr. Hall: Even so, in view of your Honor's ruling, I shall not intentionally enter into the benefit or detriment to the public aspect, but I have certain questions to put to the witness which relate to competition,——

The Court: All right.

Mr. Hall: —and I ask your Honor to believe that I am endeavoring to develop that.

The Court: I see.

Mr. Hall:

Q. Now, will you bear in mind, Mr. Garrett, that the questions that I am going to put to you relate to the Western

Area, so-called, that is, the states of California, Oregon, Washington, Arizona, Utah and Nevada.

A. Yes, sir.

Q. And Idaho, also?

A. Yes, sir.

Q. Will you bear in mind also that this case involves cer-
[fol. 1972] tain clauses in forms of contract and sublease between a supplier of products and a dealer, which obligate the dealer to buy from such supplier his resale requirements at a given location of all such products. I will call these clauses, for brevity, requirement clauses, and will you bear that in mind in connection with my subsequent questions?

A. Yes, sir.

Q. Now, what, in your opinion, would be the result of the elimination of all clauses in contracts or leases which I have described as requirements clauses?

Mr. Dixon: Object to the question as wholly irrelevant and immaterial, and calling for conjecture and speculation of the witness.

The Court: I think it really calls for an interpretation of the requirements or of the terms. Some questions were asked of witnesses for the government, but they were questions which directly called for facts and not for the interpretation of requirements, and I allowed it merely to the extent of permitting questions or permitting the witnesses to testify as to the reasons for continuing certain things. Now, it is one thing to have a dealer testify that after he entered into the contract he obtained certain products exclusively from Standard, but it is another thing to have somebody unconnected with the actual operation, an economist or a statistical expert, to answer a question of the type propounded, in which you ask for an opinion.

[fol. 1973] Mr. Hall: The last question I put to the witness may not be definite and narrow enough. I would like to withdraw the question and put another one.

The Court: All right. But I tell you, to indicate the kind of testimony you desire to offer and to avoid making an offer of proof, if you want to ask a leading question I am going to allow you to do so. If the object of the question is to focus the witness' attention to something specific that you may want, it will help the record by showing what you are seeking to elicit from the record.

Mr. Hall: Let me reframe the question and possibly that will fulfill what I am attempting.

Q. What, in your opinion, Mr. Garrett, would be the effect on competition of the elimination of requirement clauses by suppliers generally? I am asking you for your opinion as an expert in the field of marketing of petroleum products and in the light of your training and experience in that field.

Mr. Dixon: To which question the Government objects on the grounds that it is irrelevant and immaterial.

The Court: Will you read the question to me again? My thought wandered away for a moment to something else and I just did not hear it.

(Question read by the reporter.)

The Court: That clearly calls for economic effect of dis- [fol. 1974] continuance of the policy.

Mr. Hall: Yes, your Honor. I am not limiting it to the Standard Oil Company. I am putting the broad question to a man whom I have qualified as an economic expert, familiar with the factors that would enable him to express an opinion upon that subject.

The Court: I will sustain the objection. I think that opinion brings us to speculation upon the economic effect of that type of abandonment of the quality which the Government alleges is violative of the Act; and under my view of the cases it is not material and it does not tend to prove either the reasonableness of the restriction or its non-monopolistic effect. It is a clear question which shows clearly what you are trying to prove, so that the record is as perfect as you could make it.

Mr. Hall: Now adopting the intimation that your Honor has made as to specific questions, I would like to put further questions along the same line. Would the elimination of requirement clauses, Mr. Garrett, by suppliers generally, in your opinion, tend to a substantial increase in company-operated units?

A. I believe that is true.

Mr. Dixon: I take it, your Honor, we have——

Mr. Hall: Do not answer until counsel objects.

The Court: The answer may be stricken. Just go slowly, [fol. 1975] will you, please?

The Witness: Surely.

The Court: I do not know whether you understand what we are doing. We are what we call making a record. So just do not be too quick to answer. Give counsel an opportunity to object so that I can pass on the objection.

Mr. Dixon: To which question the Government objects on the grounds it is irrelevant and immaterial, and the answer thereto would not tend to prove any of the issues involved in this lawsuit.

The Court: The objection will be sustained for the reasons already indicated.

By Mr. Hall:

Q. Mr. Garrett, in your opinion, would the elimination of requirements contracts by suppliers generally tend to promote the growth of dealer-operated chain of service stations?

Mr. Dixon: To which question the Government objects on the grounds previously given.

The Court: The objection will be sustained for the reasons previously given. I will adopt your pattern.

By Mr. Hall:

Q. Mr. Garrett, assume that a split-pump system became general; in your opinion, based upon your training and experience, what, if any, would be the change in the overall competitive picture under such split-pump system so far as it relates to suppliers of products to retail outlets?

[fol. 1976] Mr. Dixon: To which question the Government objects on the same grounds and basis as previously stated.

The Court: The objection will be sustained for the reasons already given.

By Mr. Hall:

Q. Would the elimination of all requirements clauses by suppliers generally increase or decrease the number of existing service stations?

Mr. Dixon: To which question the Government objects on the same grounds as previously given.

The Court: The objection will be sustained.

By Mr. Hall:

Q. Would the elimination of all requirements clauses by suppliers generally tend to give the more prominent suppliers a competitive advantage?

Mr. Dixon: To which question the Government objects on the same grounds as previously stated.

The Court: The objection will be sustained.

By Mr. Hall:

Q. From the economic standpoint, Mr. Garrett, what can you tell us about the split-pump distribution system as compared with the present single supplier system of distribution in the petroleum marketing field?

Mr. Dixon: To which question the Government objects on the same grounds previously given.

The Court: The objection will be sustained.

By Mr. Hall:

Q. From the economic standpoint does a split-pump dis-
[fol. 1977] tribution system increase the cost of distribution as compared with a single supplier system so far as the dealer is concerned?

Mr. Dixon: To which question the Government objects on the same grounds previously given.

The Court: Yes; the objection will be sustained.

By Mr. Hall:

Q. From the economic standpoint does a split-pump distribution system increase the cost of the distribution as compared with a single supplier system so far as the supplier is concerned?

Mr. Dixon: The same objection, your Honor.

The Court: The same ruling.

By Mr. Hall:

Q. Is a split-pump system inherently and from the economic standpoint a more expensive system of distribution?

Mr. Dixon: The same objection, your Honor.

The Court: The same ruling. When you reach the end

of this series of questions and before you go to another topic, let me know because I want to do something in the record.

Mr. Hall: Yes, sir. I have just one more question along this line.

The Court: All right.

By Mr. Hall:

Q. Assuming that a split-pump system from the economic standpoint would be a more expensive system, in your [fol. 1978] opinion, would the added expense under a split-pump system be ultimately borne by the purchasing public?

Mr. Dixon: The same objection.

The Court: The objection is sustained.

Mr. Hall: You may take the witness.

Mr. Dixon: No questions.

The Court: All right. You may step down.

I desire to state for the record that I consider the questions propounded to this witness as going to the economic merits or demerits of the present system as contrasted with a system which prevailed prior to its establishment and which would prevail if the court declared the present arrangement between the supplier, the Standard Oil Company, and the stations governed by dealership contracts or the TBA contracts other than and not including the company-operated stations.

For the reasons indicated, I consider the inquiry beyond the scope of this lawsuit and entirely immaterial, because, if the practice is one forbidden by the Statute, the fact that it may result in economic benefit or its abandonment might result in economic loss is not material under the decisions of the Supreme Court and the Circuit Courts of Appeals, as I read them.

I will state for the record that I would sustain objections to similar inquiry on the part of any other witnesses that [fol. 1979] the defendant might produce; and I would sustain objections to any chart or documentary evidence seeking to elicit the facts implied in these questions.

And I will further state for the record that, because of that, the defendants need not call such witnesses or offer such exhibits or make an offer of proof to cover the facts sought to be elicited through this inquiry.

What is that old expression? "Hog-tight, bull-strong, and horse-high," isn't it, like an old-fashioned fence? I have given you a ruling there that will allow you to bring up any facet of that question before any court of appeal that this case may reach.

Mr. Hall: Mr. Hillback.

ELLIOTT D. HILLBACK, called as a witness by the defendants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Elliott, E-l-l-i-o-t-t, D. Hillback, H-i-l-l-b-a-c-k.

The Clerk: H-i-l-l-b-a-c-k—right?

The Witness: That is right.

Direct examination.

By Mr. Hall:

Q. What is your present occupation, Mr. Hillback?

A. My formal title is coordinating specialist in the merchandising division of dealer sales, Standard Oil Company [fol. 1980] of California which in effect means that I direct the activities of the merchandising office under the division manager.

Q. And how long have you held that position?

A. That particular position, about a year and a half; similar positions in the same department or divisions, for three or four years; and prior to that, four or five years in various organizations within the marketing department.

Mr. Hall: I ask that the sheet that I now hand to the clerk be marked for identification with defendants' letters next in order.

The Clerk: That is FFF for identification.

By Mr. Hall:

Q. I call your attention to the sheet which has been marked FFF, Mr. Hillback, and ask you if that was prepared under your supervision?

A. It was.

Q. At about what time was it prepared?

A. It was prepared, this particular piece of paper was prepared sometime last month, but it is taken from a survey that was made in the early part of January, or in January, 1947 and extended for approximately two months.

Q. And upon what was the survey based?

A. This summary is based on a survey of our field organization and which the home office requested, as we do so often in the normal course of our business, to determine [fol. 1981] just what our position is with our dealers and what kind of merchandise they are handling, and, as a result, we got out a little form which we sent to our districts which asked them to fill it out with respect to each of our dealers and forward it to us for analysis and consideration, and this is a summary of those sheets.

Q. I notice on this sheet a vertical column headed NO. OF CDA'S. What are the numerals in that column; what do they represent?

A. That represents the number of CDA'S, that is, the number of Chevron dealers handling our TBA line that were covered by this survey in the respective districts shown on the left.

Q. So that the survey covers 2,777 dealers handling tires, tubes, and batteries?

A. Handling the tires, tubes, and batteries sold by the Standard Oil Company; yes.

Q. Under the general heading TIRES in the next vertical columns there is one columned head "NO." and another column headed by a per cent sign. What do those two columns represent?

A. Well, the first two headed with NO., meaning number, indicates the number of dealers handling our line of tires, batteries, and accessories who are also handling competitive merchandise of like character; and the second column is [fol. 1982] merely a per cent that that number represents to the total number of such dealers that we have in that district.

Q. Now, the same may be said, may it not, of the vertical columns under the headings TUBES and BATTERIES and ACCESSORIES?

A. That is correct.

Q. Coming to the two columns headed with the word ANY, what do they represent?

A. That represents the number of stations handling the

company's TBA which also handle any competitive merchandise of like character; and the second column, again, represents the percentage that such stations represent of the total.

Q. Are the original reports upon which Defendants' FFF for identification is based in the court room?

A. They are.

Q. Are they in that large packing case over on the table?

A. The second of the two, the one we have already looked at; yes.

Q. How many thousands would you say there are?

A. There are 2,777, if the thing is complete, and we have every reason to expect that they are.

Mr. Hall: I offer into evidence the document which has [fol. 1983] been marked Exhibit FFF for identification and tender to counsel examination of the original documents which the witness states were the foundation for the compilation or the summary.

Mr. Dixon: Objected to, your Honor, on the grounds it is irrelevant and immaterial under Section 9 of the TBA contract, Government's Exhibit 3—pardon me, Government's Exhibit 4, paragraph 13, the same being the dealer agreement TBA form and distributor agreement, Exhibit 2, the provision contained in that exhibit entitled "breach of contract."

Mr. Hall: If the court please, this, if for no other purpose, would be admissible as refutation of the testimony of numerous witnesses produced by the Government, inasmuch as the sheet shows the exact status, at least of that period, of tires, tubes, batteries, and accessories handled by these particular Standard dealers.

The Court: I think it already appears from the evidence and it was admitted by one—well, by practically every witness that appeared for the Government, and also one of the witnesses for the defendant, that despite the fact that the contract, as interpreted, practically called for the supplying by Standard of all the requirements, as a question of fact, first, brought on by scarcities and then brought on by the individual desires of the individual patrons, the competitive [fol. 1984] products were sold at these outlets. I think this bears upon that same topic. The objection is overruled. Do I correctly understand the purpose of this?

The Witness: That is right, your Honor.

The Court: I confess I need a lot of explanation in words of one syllable when it comes to mathematics. Off the record:

(Brief comment off the record.)

That will be received as FFF.

The Clerk: Defendants' FFF in evidence.

Mr. Hall: I ask that the three sheets which I now present to the clerk be marked for identification with defendants' letters next in order, as one exhibit.

The Clerk: Defendants' GGG marked for identification.

By Mr. Hall:

Q. I show you the sheets that have now been marked Defendants' Exhibit GGG for identification and ask you what those sheets are designed to depict?

A. This is a list showing by states what companies in the seven western states market their own brand of lubricating oil, depicts a certain number of which I do not know the total but which can be determined by simply adding them up.

Q. It does not show the quantities; it simply shows a list of the companies and the states in which they retail lubricating oils, is that correct?

[fol. 1985] A. That is right; it is merely a list of our competitors. It takes some three or four pages.

Q. And it was prepared in the lubricating oil division of your department?

A. That is correct.

Mr. Hall: I offer into evidence the sheets that have been marked as GGG.

The Court: They may be received.

The Clerk: GGG in evidence.

Mr. Hall: Now, your Honor, we could take a recess, I think we might be done but I want to be sure.

The Court: All right; we will take a short recess.

(Short recess.)

[fol. 1986] The Court: All right, gentlemen, proceed. Mr. Hall, have you finished with the witness?

Mr. Hall: I have finished, yes.

The Court: All right.

Cross-examination.

By Mr. Dixon:

Q. Mr. Hillback, directing your attention to Defendants' Exhibit FFF, at whose direction did you make this survey from which the figures contained in said exhibit just mentioned were secured?

Mr. Hall: Will you put the exhibit before the witness, please?

Mr. Dixon: Oh, I am sorry.

The Witness: Mr. W. A. Frasier, the manager of our merchandising division, dealer sales.

By Mr. Dixon:

Q. What was the purpose of the survey, if you know?

A. Well, I wasn't told that the purpose is such and such. If you want my opinion, I will give it to you.

Q. No, I don't want your opinion. I want to know what the purpose of the survey was.

A. On that basis, I would have to say I do not know. I would only be speculating.

Q. What conversation, if any, did you have with Mr. Frasier at the time he told you to have this survey made? [fol. 1987] A. Well, if I remember it, we were discussing at that time the fact that we wanted to begin to develop our merchandising. After all, we were a young organization, having been created only in 1944, and we had been, from a merchandising standpoint,——

Q. Let me interrupt you.

A. I can explain this, if you will let me finish my answer.

Q. I just asked you for your conversation with Mr. Frasier, if any.

A. All right. He said to me that inasmuch as we are now in a position to supply more merchandise, I think it would be wise for us to develop just what type of merchandise our dealers are handling, and to get a basis upon which we can develop some merchandising program, and as a result see if you can draw up a form to get our branch people to investigate the situation, and we will go on from there. That is about the extent of the conversation with me.

Q. Pursuant to that conversation you prepared the form which was ultimately used in making the check of your TBA dealers, did you?

A. Well, I; in conjunction with several other people in the organization, yes, sir.

Q. Will you tell the court how that survey was made?

A. Well, I did not do the actual survey work, as you [fol. 1988] probably understand.

Q. It was done by several, shall we say, hundreds of individuals, was it?

A. Possibly that is true. The forms as such, which were prepared in our office, were forwarded to the district managers, asking them to see that in the course of regular business they would have our field representatives, as they called on stations, fill them out and return them. And that was done, I should say, over a period of about two months.

Q. Then a visit was made, was it, by a representative of the company to each of the Chevron dealers who had a TBA agreement, to determine whether or not he was carrying competitive merchandise?

A. I would say that is not correct.

Q. Well, was any visit made by anyone to any Chevron dealer station to get the information as to whether that station was carrying what you call competitive TBA merchandise?

A. Well, I already testified, I believe, that this was done in the normal course of business. Every one of our representatives has a normal number of dealers to call on, and when he was there, he filled out the form and sent it in. So there was no special visit made to inspect for this purpose.

Q. But a visit was made to the station, wasn't it, to de- [fol. 1989] termine whether or not it was carrying competitive TBA merchandise in this survey?

A. You are trying to twist what I said.

Mr. Dixon: No, I am not trying to twist anything that you said.

The Court: No, he wants to know how you arrived at that.

The Witness: Every one of these sheets——

The Court: There are various methods of finding out whether a certain policy is carried on.

The Witness: That is right. Well, a visit was made for every report, that is correct.

By Mr. Dixon:

Q. By a representative of the company?

A. Correct.

Q. And at the time that visit was made, he inspected the TBA Chevron dealer station to determine what competitive TBA merchandise that Chevron dealer was handling; is that correct?

A. Yes, sir.

Q. And after that inspection was made, he filled out the report and forwarded it to the proper representative of the company?

A. That is correct.

Q. And those reports are the ones contained in the box which has been made available to counsel for the government?

[fol. 1990] A. That is right.

Q. Now, again directing your attention to Exhibit FFF, in the columns where you have inserted the numbers, under the heading "Tire, Tubes, Batteries and Accessories," if any single item was found within those categories named as a result of the examination of the reports before referred to, then you would regard that station, that TBA Chevron dealer, as handling competitive merchandise and would list him within one of these columns; is that correct?

A. That is correct. With respect to tires, it could be one tire or fifty, as was the case sometimes.

Q. I have taken at random one of these reports, which I will ask be marked for identification.

The Clerk: Government's Exhibit 105, for identification.

By Mr. Dixon:

Q. (Continuing:) —which I have taken from the box containing the reports made available to the government, and will ask you if that is the form of report and the type of report that was submitted as a result of this survey?

A. That's correct. These or similar ones to them were prepared in our office, the form itself, and forwarded to the district to be filled in, as I have previously testified.

Mr. Dixon: The government offers Exhibit 105 in evidence.

[fol. 1991] Mr. Hall: You are offering it just as a sample?

Mr. Dixon: That is right.

Mr. Hall: No objection.

The Clerk: Admitted, your Honor?

The Court: Yes.

The Clerk: Government's Exhibit 105 in evidence.

By Mr. Dixon:

Q. Now, this survey was completed when?

A. Well, it was started in the early part of January, and, to the best of my knowledge, was completed in about two months. However, the forms themselves are dated, and there may have been a few straggling in a little longer than that.

Q. Have you made any similar survey since the early part of 1947, that is, January of 1947, of this character, Mr. Hillback?

A. I have not, and I know of none.

Q. Now, I believe you also testified at the time this survey was made the supply of the items of tires, tubes, batteries and accessories were just becoming more plentiful; is that correct?

A. Well, I would put it this way, that certain of them were and certain of them had been in good supply, but, generally speaking, we at that time felt that we should look [fol. 1992] into the situation, and, generally speaking, that was based on the supply situation.

Q. Now, again directing your attention to Exhibit FFF, you will find there in the last column under the heading "any" the number, say, under the San Francisco area, of 131. What does that number represent?

A. "131" represents the number of dealer stations in the San Francisco district who were handling the Standard Oil Company's TBA, and were also handling some competitive merchandise of a similar kind to that that is distributed by our company.

Q. And even though if there was only one tire or one single item, it would be included within that total of 131: is that correct?

A. I believe it would.

Q. Now, directing your attention to Exhibit GGG,—do you have that?

A. Not up here.

Q. Do you know how many outlets any of the companies

named in said exhibit have in the states mentioned therein for the sale of their products, that is, the lubricating oils to the motoring public?

A. No, sir.

Q. Do you have any information concerning the number of outlets of any of the companies named on Exhibit GGG, [fol. 1993] where their lubricating oils are sold to the public at retail in any of the states within the Western Area?

A. That was kind of long. Would you mind reading it back, please?

(The question was read.)

A. I have a bare knowledge of our own, and if our company appears on this list, then I know something of that, but I merely know because I work for the company, and not as to actual figures. But with regard to the other companies, I know nothing.

Mr. Dixon: I think that is all, Mr. Hillback.

The Court: That is all. Any redirect?

Mr. Hall: Just a moment, your Honor.

No examination, your Honor.

The Court: Step down.

Mr. Hall: The defendants rest.

The Court: Any rebuttal, gentlemen?

COLLOQUY

Mr. Dixon: If the court please, if it is agreeable with the court, I would like until the afternoon to determine what rebuttal evidence or testimony the government will present. I will say to the court that there may be a very short examination of one witness on a matter, not with reference to any new material, obviously, but with reference to some of the exhibits, and so forth, that have been introduced in evidence, and that will constitute the government's rebuttal, if any.

[fol. 1994] The Court: Now, gentlemen, let me ask you this question: Would you be ready to proceed in case you did offer any additional testimony, with the argument?

Mr. Dixon: Well, if the court please, I would prefer to commence the argument tomorrow, if the court could see fit to give us that additional time. Frankly, I haven't had time to gather all of the material I would like to make avail-

able to the court, and I mean factually speaking, in the way of argument.

The Court: I am compelled to ask that question by two things, this case is an important case, not only from the standpoint of the particular defendants, but from the standpoint of the government as well, because it is evident now that you were correct, Mr. Dixon, when you said at the beginning that the case affects not only this particular defendant, but also practices which, as the evidence shows, are indulged in by other companies in this particular area, as the representatives of those companies very frankly, and I may say I use the word intentionally because it expresses my view very forthrightly, admitted when they were called here.

Because it has been pending for a long while, it is of utmost importance that it be decided as quickly as possible. I have already indicated that I would be generous with time [fol. 1995] so far as argument is concerned.

Now, the longer the week-end I have, the more time I will have to gather my own thoughts, and even after all the facts are before me, the nature of my work, as you know, is such that I cannot take a week off to determine the case. If I take a week's time, I will have to take it after hours or in between. So if it were possible to begin the argument this afternoon, even if we put in no more than an hour or two, it might be possible to conclude the argument tomorrow, which will give me the entire week-end to devote to the study of the case while the facts are clear in my mind and before I begin to try other cases which follow.

I may also say that taking down argument, solid argument, is very, very hard on the reporters. The reporters may take down several hundred pages of testimony by questions and answers during a long session without tasking their strength, but four or five hours of argument during a day taxes the strength of the strongest reporter, even when they work in relays, as they do at the present time.

An examination of the transcript shows that we have put in a tremendously large number of folios day in and day out, even excluding the documentary evidence.

Mr. Dixon: That is right.

The Court: So if it were possible to begin, I would be willing to adjourn, say, to 3:00 o'clock so that we might [fol. 1996] get a start, and if you take two hours to give

your presentation, if you do not conclude, then we can continue tomorrow. If you do conclude, we will not break the continuity of the other side, and then we can try to arrange our hours tomorrow so that it is possible that the entire argument will be concluded fomorrow.

I am presenting that to you both, so that we may arrive at a decision in the matter. I think so far as today's testimony is concerned, it is not of a character that requires any special analysis.

Mr. Dixon: That is my thought, your Honor.

The Court: And if you want, I will fix the hour at any time you desire. If you intend to take some time now, we will adjourn until 3:00 o'clock, and then we can begin with the argument.

I think the principles of law have been pretty well discussed in the brief and in the memoranda, and in the arguments on the admissibility of the testimony, and I think the case has narrowed down to the limits I expressed yesterday. So I think we can begin the argument, because an afternoon will not do you much more good than the time you have between now and then. If I gave you two or three days, it might make a difference.

Mr. Dixon: I wouldn't ask for that time, your Honor.

The Court: But an hour more or less, or two hours, more [fol. 1997] or less, one way or the other should not make much difference. What we are interested in are not rounded periods of a formal talk, but an informal discussion of the facts in the light of the principles of law which govern the case. That, as I say, I think can be done, and unless it creates a special hardship for you, I would prefer we do that rather than take the afternoon off, because so far as my own time is concerned, the only time I can achieve any work is when I have uninterrupted time. Split time does not help.

To illustrate, I came down this morning at 9:00 o'clock, believing that I would have an hour to myself to devote to this case. I found two attorneys waiting for me, and they had not given me notice in advance, but it was on an urgent matter. It is an appeal in an insurance case in which I had to decide what, if any, supersedeas bond was to be put up in case of an appeal, and by the time we got through discussing the various matters and looking at the record and agreeing upon an amount, why, the hour I had thought I

could devote to formulating some of my thoughts in advance, preparing myself for the argument, was gone. In fact, I asked counsel whom you all know very well, Mr. Thomas Menzies, for one, to come and bear me out and to tell you they had kept me in there until 15 minutes after ten.

So in view of the fact that the testimony today is not [fol. 1998] of any new character that requires any special study, I feel I would not be imposing any special hardship by requesting you to begin your argument this afternoon.

Mr. Dixon: I will endeavor to comply with your Honor's request.

The Court: Would you like me to give you until 2:30?

Mr. Dixon: Well, I have another problem to decide over the noon hour, your Honor, and that is what rebuttal testimony, if any, we put in.

The Court: Let's make it 2:00 o'clock, then.

Mr. Dixon: Then I might say this: the one reason I would need any additional time would be more or less to marshal the evidence, to aid the court in getting at those exhibits and things that we regard as being material, and that, frankly, I have not had time to do yet.

If it were at all possible to begin working tomorrow morning earlier, say, at 9:30 or at 9:00 o'clock, I think I could make my argument certainly before the noon hour closed, because I don't, frankly, expect to make a very long argument, your Honor, but I do want to give to your Honor the benefit of what we feel is the evidence that we should like to direct your Honor's attention to, particularly in this mass of evidence that has been produced in the trial of the case.

The Court: I think, as I told you before, gentlemen, I [fol. 1999] have studied this mass of evidence, and, as a matter of fact, while it is voluminous,——

Mr. Dixon: It is all of the same character.

The Court: —it is all of the same character.

Mr. Dixon: That is right.

The Court: And the facts here are simple. They do not compare to the complicated issues that I had before me in the Food and Grocery case,——

Mr. Dixon: That is right.

The Court: —although that case did not take the time

that this case has taken, because, as I see it, the pattern that has developed is clear and practically uncontradicted.

Mr. Dixon: That is right. I agree, your Honor.

The Court: Then we will make it 2:00 o'clock.

Mr. Dixon: All right, your Honor.

(Whereupon at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p. m. of the same day.)

[fol. 2000] Los Angeles, California, Wednesday, May 26, 1948. 2:00 P. M.

The Court: All right, gentlemen. Proceed. Are you going to present additional testimony?

Mr. Dixon: No, your Honor. We decided not to offer any rebuttal testimony.

The Court: All right. Then I want the record to show that you have rested.

Mr. Dixon: That is right.

The Court: Proceed with the argument.

OPENING ARGUMENT ON BEHALF OF PLAINTIFF

By Mr. Dixon:

May it please the court, this is an action brought by the Government to enjoin the enforcement of certain provisions of certain contracts as used by the defendants in seven western states in connection with the sale and distribution of petroleum products and automotive tires, tubes, and accessories. The Government is asking that these provisions in the contracts that I will discuss in a moment be declared void and unenforcible as to these defendants, and for such other equitable relief as the court may determine to be just and proper on the basis of evidence submitted.

The questions presented to the court in this case, I believe, are rather simple. The Government charges in its complaint that the provisions in the contract referred to [fol. 2001] operate to restrain trade and commerce in the commodities involved and sold and distributed under these contracts, under Section 1 of the Sherman Act, and that they are also illegal under Section 3 of the Clayton Act; and that they tend to substantially lessen competition and

to promote a monopoly in the sale and distribution of the products covered by these contracts.

As we view the law—and I am going to only briefly refer to it at this time—there is really only one question presented to the court on the evidence that has been submitted by the Government and the defendants in this case; and that is as to whether or not these contracts—and there are some 7,000 of them that are in use by the defendants in the western area—operate to restrain the market, and as to whether or not the market restrained is a substantial market.

In other words, under the recent decisions of the Supreme Court in the International Salt case and the Yellow Cab case, it is the contention of the Government that where you have contracts of this character in wide use, such as they are in this case, operating and in effect in seven different states, and that where the commerce involved and subject to those contracts is a substantial amount, that on a showing of those facts, the contracts themselves in their context become illegal per se under both the Sherman and the Clayton Acts.

[fol. 2002] In other words, the Government is not contending here that ordinarily a requirements contract would be illegal. We are not here raising that position or contention.

The Court: That is a departure from the position you presented in your case.

Mr. Dixon: No; I don't think it is, your Honor.

The Court: In your pleading?

Mr. Dixon: No. And if your Honor has that view, I am glad you raised the question now so that we can clearly state our position.

The Court: All right.

Mr. Dixon: That the contracts here, as in the International Salt case, are illegal per se; that is, the requirements contracts and exclusive dealing type of contracts are illegal per se because they operate to completely foreclose a substantial market from all interstate competition for that market. I mean by that from any manufacturers that are producing products comparable to those, competition-wise, that are being covered by these contracts, that those manufacturers, on the one hand, are completely excluded from this market by these contracts, and that the dealers who are

also subject to the contracts are completely precluded from even bargaining with these manufacturers to purchase their products.

[fol. 2003] In other words, as I suggested a moment ago, a requirements contract, standing alone as a single contract, if the court please, between an individual and a corporation or between two individuals, would not necessarily in and of itself be a violation of the Sherman or the Clayton Acts, but when you get, as you have in this case, a substantial amount of such contracts, all of which are substantially the same in the language used, and, certainly substantially the same in the effect and purposes for which they are used, that, under those circumstances, the contracts become illegal per se under both the Sherman Act and Section 3 of the Clayton Act.

The Court: Then your concession relates merely to size. You still insist they are illegal per se because, instead of being one or two, there are many?

Mr. Dixon: That is right, your Honor; correct.

The Court: And that if that is the case, then all the court would have to consider is whether the number of contracts is a criterion, regardless of the actual effect on commerce generally or interstate commerce in the particular area.

Mr. Dixon: I think that is correct, your Honor.

The Court: I just want to be certain I am getting your contention.

Mr. Dixon: Yes, that is correct.

[fol. 2004] The Court: —because even in the Yellow Cab case the Supreme Court states that exclusiveness of a contract is not in itself an illegality; that it does not make it illegal. They refer to a transportation case and refer to exclusiveness of transportation, in a case in 198 U. S., an early case. It is because of that that I raise the point, so as to give you an opportunity to express your views.

You still maintain, put it this way, that given a large number of these contracts affecting an area they become illegal, and we need not concern ourselves with the actual effect in quantity upon the commerce, and the fact as to whether there was actual competition in the field, so long as there was no competition as to these particular outlets.

Mr. Dixon: That is right, your Honor. You have stated it, and that is our view exactly.

The Court: I am trying to understand your position.

Mr. Dixon: That is right.

The Court: I spent the entire noon hour rereading the last group of cases that we have been talking about, eliminating the old ones, but the cases that have been called to my attention in the memoranda, and especially those that formed the topic of discussion both at the beginning of the case and especially in the last week, on Thursday and Friday.

Mr. Dixon: Yes. I think I stated in answer to your Honor's question early in the trial, as to whether or not [fol. 2005] there was a difference of criteria applicable under the Sherman Act and the Clayton Act, and I said that, from the context of the facts in this case our position would be the same, that the contracts would be illegal.

In other words, in the International Salt case, which your Honor has read many times, and, of course, is familiar with, the amount of commerce and the market that was foreclosed from competition by those contracts,—I mean, there were only about 800 of them that were involved in the International Salt case, and in dollar volume it constituted a market of less than $1,000,000. In other words, as I recall, there was about $500,000 involved. Yes, the opinion here states that a half a million dollars was the total amount of the market which was involved in the International Salt case, and it was that market from which all competition was excluded by reason of the agreements in the International Salt case. But the Supreme Court, in reviewing the decision of the District Court holding those contracts illegal, under a motion for summary judgment, in that context, if the court please, held there was a substantial market involved in that case, namely, that half a million dollars worth of commerce between the various states of the United States constituted a substantial amount of commerce, and then applied the principle of law that where the contracts—and I emphasize the plural there, because there were some [fol. 2006] 800 of them, your Honor may recall—where the contracts operate to foreclose all competition from what the Supreme Court called a substantial market, that they were in that context illegal per se.

Now, applying that principle of law to the facts of our case, as we see it, we have in this case clearly shown that a substantial interstate market is involved, because the commerce here totals, from the sales of gasoline, lubricating

oils, tires, tubes, batteries and accessories, for the year 1946 in excess of 58 millions of dollars, and for the year 1947 in excess of 68 millions of dollars. In other words, by comparison, the Supreme Court having held we feel, as a matter of law, that a half a million dollars worth of commerce in salt constituted a substantial market, certainly a market involving 58 millions; or to bring it up to date for the last year, 1947, a total amount of 68 millions of dollars of interstate commerce, or of commerce, certainly involves a substantial market. So that the only question which we feel is open for the court to decide in this case is whether or not these contracts, by their language, operate to foreclose competition from this 58 million or 68 million worth of business which the Standard Oil Company and its wholly-owned subsidiary enjoy under these contracts.

It might well have been that the government could have [fol. 2007] rested its case here upon a showing merely of those facts, namely, the total amount of commerce involved, showing that it was interstate in character, or localized throughout the various states, the seven states in the Western Area, and that these contracts, by their language, operated to preclude all competition for that market.

However, we did put on the testimony of some 40 witnesses. There were a total of 50 witnesses, I believe, that were submitted by the government here, your Honor, but the greater portion of them by far testified to their experience, factually speaking, in endeavoring to tear down this wall which we contend has been created and built by these contracts to exclude them from that type of market. In other words, your Honor, these contracts, by their language, and I am going to discuss that in a moment very briefly, we submit operates to require all of the dealers or the persons who have entered into these contracts, selling Standard Oil products and Atlas products and accessories, to purchase their requirements only from the Standard Oil Company, and in many cases, as the leases involved here and the contracts themselves provide, to sell no other type of merchandise competitive with those products on the premises at which the dealer operates the retail service station outlet.

Now, if these contracts, as a matter of law, from the construction of them will have that effect, and if there is any [fol. 2008] question as to that point, we submit that it cer-

tainly has been definitely shown by the testimony that in practice and in operation these contracts have had that effect, then the only remaining question, as I said, is from the evidence as a question of fact do they operate to foreclose that competition from a substantial market? On the basis of the International Salt case, the Supreme Court has held, as a matter of law, that half a million dollars worth of business is a substantial amount of business to be foreclosed by competition, and where it is foreclosed under contracts which have that effect, those contracts are illegal per se both under the Sherman Act and under the Clayton Act.

In the Yellow Cab case, where a similar situation was presented, factually speaking, there were only 2500 taxicabs involved, and the area involved was rather local, involving only three or four cities in the United States, and the total amount of articles or subjects of commerce there, as I have suggested, were only 2500 taxicabs. Yet the Supreme Court held that to conspire to foreclose that market from all competition, such as was alleged in the complaint, and, of course, for the purposes of that case the complaint or the facts alleged were conceded to be true on the motions of the defendant to dismiss the complaint, and on argument in the Supreme Court, so that where you have a market of that [fol. 2009] character the Supreme Court has held, as a matter of law, that that constitutes a substantial market, sufficient to make the contracts or the action to foreclose it from all competition illegal under the Sherman Act. Of course, the Yellow Cab case was not a Clayton Act case, because it was a conspiracy case to restrain competition in the sale of cabs, but the restraint was the same in effect as we have in this case, because the contracts by which the restraint was imposed operated to completely eliminate all competition from any other manufacturer for the sale of the 2500 taxicabs, and both as to the manufacture, or as to other manufacturers for that business, and also to prevent the operator of the taxicab companies from purchasing the taxicabs from any other source other than the defendant company producing them, and which sold them under the exclusive sales contracts.

The Court: Don't the courts hold in interpreting Section 2 of the Act, which is the conspiracy section, that as to that the amount of commerce is not important, that the amount of commerce is immaterial. Isn't that the exact language

which Judge Hand uses in the Aluminum case, by saying that one act is sufficient under the Conspiracy Statute?

[fol. 2010] Mr. Dixon: All right, your Honor. In other words, if the act charged as being the violation of the Sherman Act is the act of conspiring to restrain trade, if the conspiracy, if carried out, would operate in fact to unreasonably restrain trade under Section 1 of the Sherman Act—of course, if I might suggest, the conspiracy section applies to both Sections 1 and 2 of the Sherman Act.

The Court: That is true, but you are not charging conspiracy here.

Mr. Dixon: That is right.

The Court: This is merely an act between the principals, between the corporations.

Mr. Dixon: Then if it is clear that the intent of the parties is to restrain trade and commerce—I mean intention of the Act is to restrain trade and commerce, under those facts you may have no actual restraint even shown, and the amount of commerce is wolly immaterial insofar as violating the Sherman Act is concerned.

So that you can very well have a violation of the Sherman Act under both Sections 1 and 2 without having, in fact, any actual restraint of commerce at all. But that is not our situation here and that is not the contention the Government is making in this case.

The Government contends in this case that these contracts—and this is a Section 1 case under the Sherman Act, [fol. 2011] as well as Section 3 under the Clayton Act—that these contracts operate to unreasonably restrain trade and commerce in petroleum products, tires, tubes, automobile accessories because in their effect they operate to completely foreclose a substantial market from all competition. That, in a very few words, is the position of the Government in this case: that where you operate, or where your acts—and in this case it is the contracts that they entered into—operate to completely foreclose all competition for a substantial market—and you must have those two things, those two requirements, of course, to have a violation—that in that context they become illegal per se under the Sherman Act and also under Section 3 of the Clayton Act. And the test under the Clayton Act is, of course, that these contracts, by completely foreclosing all competition for that market, not only tend to substantially lessen competition

for the sale of those products, but that it tends—and I emphasize the word "tends" because your Honor is familiar with the recent Sugar case—I mean the Morton Salt decision, *Federal Trade* v. *Morton Salt*, where the Supreme Court has said that under the Act it is sufficient if the contracts, or, to use the term applicable to this case, even may have the possible effect of substantially lessening competition or tending to promote a monopoly.

We do not have to show here, and the Government does [fol. 2012] not contend, that the Standard Oil Company is monopolizing this market for petroleum products in the seven western states, except that it does have a monopoly on the business——

The Court: Of the particular states.

Mr. Dixon: That is right; of all of the outlets that are subject to these contracts. And that is the point where we and counsel for the defendants differ, because——

The Court: Lots of difference.

Mr. Dixon: —on the evidence which they have endeavored to—I mention this, your Honor, I am not being facetious, because I believe it does represent the real difference between the Government and the defendants in this case.

As I endeavored to analyze the testimony which they were putting in here of how much business other companies did with reference to what Standard did, to me it was wholly immaterial because we are not charging Standard here of having a monopoly of all of the petroleum business or all of the automotive accessory business in the seven western states at all. But we do contend and we submit that facts clearly show that as to the outlets subject to these contracts that they do have such a monopoly, and they have it because no one can compete. I mean no other manufacturer of petroleum products, no other manufacturer of tires, tubes, batteries and automotive accessories can compete for the market, the interstate market of these seven states [fol. 2013] which is represented by the approximately 6,000 outlets that are subject to these restrictive agreements.

I suggested at the outset that we do have in this case, we submit, a substantial amount of commerce involved. In other words, we have a substantial market that is subject to these restrictions; and that the top dollar volume of that

market for the year 1947 is in excess of 68 millions of dollars.

The next question arises as to how many contracts or how many agreements are involved here.

Well, the record shows that over 7,100 agreements are in use and operate to effect the complete exclusion of all competition for the market represented by these approximately 6,000 outlets at which the Standard products and the Atlas products are sold exclusively. I can break that down briefly for your Honor as to the character—I mean the types of contracts, and perhaps it might be helpful to do so.

I briefly state that over 1,656 of these agreements—and these figures, your Honor, are all taken as of March 12, 1947. I do not know whether they have increased in amount since that time or decreased, but at least for the purposes of this lawsuit that is the only figure before the court. And the dealer agreements, as I suggested, Government Exhibit No. 1, there are over 1,656 of those agreements in operation and effect as of March 12, 1947.

[fol. 2014] Of the dealer agreement TBA—that is Government's No. 4—there were over 2,221 of those agreements in effect on the same date.

There were over 912 of the petroleum products and equipment agreements; that is Government's Exhibit 3.

There were over 556 distributor agreements—that is Government's Exhibit 2—in effect.

And in addition to those agreements, there were 1,800 of these so-called subleases which were also involved and which are involved in this lawsuit.

So that the total number of agreements involved here are in excess of 7,100.

The Court: Just a minute. What is the number of the Exhibit that is the sublease? That is 5, isn't it?

Mr. Dixon: The sublease, your Honor, is No. 5.

The Court: 5, that is right.

Mr. Dixon: Briefly, coming to those agreements, because if we are to rest our case solely on the agreements and forget about the oral testimony, it is necessary, of course, to examine the provisions of these agreements to see whether they can or may or do operate to exclude all competition from what we call a substantial market.

Paragraph 1 of the dealer agreement—that is Government's Exhibit 1—provides that the Standard Oil Company

agrees to sell and the dealer agrees to buy, and then I am quoting:

[fol. 2015] "all of dealer's requirements of petroleum products used or sold or bought to be used or sold by the dealer."

And then follows a place in the contract form for the description of the premises. So that under dealer agreement, Government's Exhibit No. 1, the dealer must purchase and can only sell such petroleum products as are sold to him by the Standard Oil Company for sale on the premises covered in the agreement.

I am going to briefly refer to two other provisions in this dealer agreement, No. 1, because they do appear throughout all the other agreements, with the possible exception of the lease. In substance the language is the same in all of them.

Paragraph 7 of the dealer agreement then goes on to provide that:

"in the performance of this agreement dealer is engaged in an independent business"——

And I emphasize the words "independent business." Continuing:

"and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his conduct in the performance of this agreement."

[fol. 2016] Then follows further language to the effect the Company reserves no right to control any of his employees and comparable provisions, the obvious purpose of which is to make it clear that, as a matter of law, the dealer is in no sense of the term an employee of the Standard Oil Company such as would in any sense of the term make the Standard Oil Company liable for any injuries under the Workmen's Compensation Act or any of the social security or unemployment taxes that are imposed upon companies that are operating in the relationship of employer and employee or of principal and agent.

Paragraph 9 of this agreement is also of import and I am going to refer to it here, because much has been made in

one of the defendants' exhibits of the fact that other competitive products have been sold under the TBA agreements. I think your Honor is familiar with the testimony along that line. It happened during the war, and so on. It was a temporary waiver of this provision, as we construe it. But in any event paragraph 9 provides:

> "The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default."

I mention that merely because I anticipate that the defendants here—I do not know, but from the line of testimony in that exhibit they may contend that competition [fol. 2017] here was not restrained in fact. But regardless of what happened concerning that period after the war when materials were scarce, the provisions of this agreement—and they are substantially the same in the other agreements attacked here—give to the Standard Oil Company the right at any time to re-impose any of these provisions of the type and character that we challenge in this case with any dealer who has entered into this agreement. So that the power, the power is ever present in the defendants under these contracts to at any time re-impose these exclusive dealing requirements on the dealers that are operating under these agreements.

Passing now to Government's Exhibit 2, the distributor agreement, the language of this agreement provides in substantially the same language——

The Court: Which are you going to now?

Mr. Dixon: Exhibit 2, your Honor.

The Court: Exhibit 2?

Mr. Dixon: That is right; the distributor agreement, and under the marginal heading QUANTITY you will find this language:

> "Company agrees to sell to Distributor"——

The Court: What paragraph is that?

Mr. Dixon: It is not numbered by paragraphs. You will find merely a marginal descriptive characterization of the [fol. 2018] paragraph in caps at the side of the agreement, your Honor, and the descriptive character is entitled QUANTITY. This provision, and I am reading now:

"Company agrees to sell to Distributor, and Distributor agrees to buy from Company and stock and offer for sale all of Distributor's requirements of petroleum products used or sold or bought to be used or sold by Distributor in the conduct of his business on the premises hereinafter described."

Then I will omit certain portions or provisions, and coming down to the end of that paragraph we find this language:

"Distributor agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station."

Now, your Honor may recall that this distributor agreement was really the forerunner of what is now called the TBA agreement; so that this so-called distributor agreement had a comparable provision to what is also now in the TBA agreement and relating to the purchases and sales of tires, tubes, and automobile accessories. And this provision reads as follows, the first portion of it, and this is under the caption OTHER MERCHANDISE.

"Company agrees to sell or consign to Distributor and Distributor agrees to purchase or receive from Com-
[fol. 2019] pany, and stock and offer for sale, all of Distributor's requirements of tires, tubes, and batteries used or sold or bought to be used or sold by Distributor on the premises above described."

And then it goes on to provide that the tires, tubes, and batteries sold or delivered to the distributor shall be the Atlas brand of tires that are handled by the company at its service stations.

And then we have the provision that I mentioned a moment ago with relation to the legal position of the company and the distributor under the heading CONDUCT OF DISTRIBUTOR'S BUSINESS and I read just this portion from that. It is a rather long paragraph covering substantially the same thing that I mentioned a moment ago, but here is the language which is the criteria of the relationship between the Standard and the dealer:

"It is understood and agreed that Distributor in the performance of his agreement is engaged in an inde-

pendent business, and nothing herein contained shall be construed as reserving to Company any right to control Distributor with respect to his physical conduct in the performance of this agreement."

And then we have the similar provision under the heading BREACH OF CONTRACT, covering the waiver of any [fol. 2020] default in the contract by the Standard Oil Company, to the effect that if there is any breach of the contract by the dealer and any temporary waiver of it, that that shall not be construed by the Company as any waiver of any subsequent breach of the contract.

Now, Exhibit 3 is the PETROLEUM PRODUCTS AND EQUIPMENT AGREEMENT. This agreement, your Honor will recall, tended to supplement the dealer agreement that is Government's Exhibit No. 1, in the year 1944. This agreement, in paragraph 1, has substantially the same language as contained in the dealer agreement, Exhibit 1, and I read as follows concerning the requirements imposed upon the dealer under this agreement.

"STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called 'Company,' agrees to sell to"——

and then follows a blank space for the name of the dealer——

"hereinafter called 'Dealer,' and Dealer agrees to buy from Company,"——

and then this is the language that I direct your Honor's attention to again:

"all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at"——

And then follows a place for the description of the property.

[fol. 2021] Then in this agreement, in paragraph 7 we have again the same provision, in substance, that we have found in the other two agreements, covering the legal relationships between the company and the dealer insofar as employer and employee is concerned. This paragraph is a little different. The wording does not contain some of the

provisions that are in the other, but in substance it is the same. I quote:

> "In the performance of this agreement Dealer is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his conduct in the performance of this agreement."

And then paragraph 9 is the usual waiver provision.

> "The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default or the waiver of the default of any other provision hereof."

Now coming to Exhibit 4, that is the dealer agreement TBA. This agreement, your Honor recalls, in a sense tended to supersede the distributor agreement in the year 1944. This agreement is somewhat—well, this embodies both petroleum products and tires, tubes, batteries, and automotive accessories. The first provision therein reads as follows: —this is paragraph 1.

"STANDARD OIL COMPANY OF CALIFORNIA [fol. 2022] hereinafter called 'Company' agrees to sell to"——

and then a place for the dealer's name.

> "hereinafter called 'Dealer,' and Dealer agrees to buy from Company, all Dealer's requirements of petroleum products used, sold, or bought to be used or sold, by Dealer at"——

And then a place for the description of the premises. And then paragraph 2 provides:

> "Company agrees to sell or consign to Dealer and Dealer agrees to purchase or receive from Company, and stock and offer for sale, all the Dealer's requirements of tires, tubes, and batteries used or sold or bought to be used or sold by Dealer on said premises."

Then going from paragraph 2 to paragraph 10, we find this provision again referred to in the other contracts, as follows:

"Dealer is engaged in an independent business and nothing herein shall be construed as reserving to Company any right to control Dealer's conduct in the performance of this agreement."

And then paragraph 13 contains the waiver provision that we have found in all of the other types of agreements that I have just referred to and described.

The last agreement involved in this case is Government's [fol. 2023] Exhibit 5 which is entitled SUBLEASE. As your Honor may recall, this lease is frequently used, and I believe in almost all cases with the exception of a very, very few, it is used in connection with some one of these other types of agreements that I have mentioned.

Paragraph 4 of the language of this contract is the language that the Government complains about. It reads as follows:

"Lessee shall handle and sell on the leased premises only such petroleum products as are sold Lessee by Lessor, and Lessee agrees not to store, handle, sell, or distribute on or from said premises any petroleum products of any description other than those petroleum products sold to Lessee by Lessor."

[fol. 2024] That, your Honor, contains in substance the provisions in these contracts that the government is complaining of, and which we are asking your Honor to declare void and unenforcible insofar as the defendants are concerned in this case.

Now, the next question which arises, as I suggested, is if you had just one, two, or three, or four of these agreements, the government would not be here challenging the legality of these agreements, but the evidence shows, as I suggested, that there are over 7,000 of these agreements in their total number that are in use and effect by the defendants in the seven western states that are involved in this case.

Now, from those we have, as a part of our oral testimony here, endeavored to select what perhaps you might call examples of the types of agreements we are complaining of here from the various states in the Western Area to indicate to your Honor, if there is any doubt about the matter,

how these contracts actually operate in the states in which they are in use.

We put on evidence in this case of six dealer agreements which were in use in the states of California, Idaho and Utah. We put on evidence of 60 TBA agreements which were in effect in the states of California, Oregon, Washington, Idaho, Utah, Nevada and Arizona. In other words, the TBA agreement was put in for every state in the Western [fol. 2025] Area, and the total amount of those agreements in evidence numbered 60. We put in three of the distributor's agreements from the states of California and Washington. We put in six of the petroleum products and equipment agreements from the states of California, Oregon, Washington and Nevada, and their the subleases attached to some of those agreements went along with the exhibits. But the total number of contracts involved here, that is, I mean that we put in evidence as illustrative of the operation of these contracts in effect that they have in competition in the seven western states totaled approximately 75 contracts. It was obviously not necessary, and would only have been cumulative to have put in more, but the government did submit evidence concerning particular types of agreements to give life to the case, and to show, if there was any question whatever from the language of the cases, and we submit there is none,—but that if there was any question, that these contracts had the practical effect to exclude all competition for this dealer market in the seven western states represented by these over 7,000 contracts, and that it operated directly to accomplish that effect.

We put on the testimony, your Honor will recall of several witnesses. As I suggested, I believe there were some 40 of them, all of which dealt with the various phases of [fol. 2026] this business. There were 13 distributors of oils and greases representing five independent companies; 14 distributors of tires manufactured by 9 independent companies; 14 distributors of batteries manufactured by 11 independent companies. And they all testified to the restraints or their inability to sell their products to the Chevron dealers that were covered or were subject to the particular type or types of contracts that we have just described; and the sales representatives of the manufacturers of these products testified to active efforts at solicitation

for the business of these various dealers, in an effort to sell their products to them.

Your Honor is familiar with the testimony—I am not going to go into it at length at this time—but I will briefly refer perhaps to some individual witnesses and their testimony as merely illustrative of the type of evidence which we submit has been presented to the court throughout the trial of this case by the government.

Now, there isn't any question, we submit on the record in this case, but that the defendants are the largest producer and seller of gasoline and petroleum products in the Western Area. If there is any question about that, I submit it is put to rest by the testimony of Mr. McClanahan on page 50 of the transcript, where he estimated that percentagewise his company had between 12 and 14 per cent of the [fol. 2027] total retail sales of petroleum products in the Western Area, and that he did not know of any company that sold more petroleum products than Standard in this area, with the possible exception of one or two states, where he said they might occupy a second position.

So coming back again to the International Salt Company case, if the facts in that case are to apply to this case, your Honor will recall that the record in the International Salt Case shows that it was the largest producer for industrial uses of salt in the United States, and here the similarity, we submit, is that the Standard Oil Company——

The Court: Are we talking about the International Salt case or the Morton Salt case?

Mr. Dixon: Not the Morton Salt case; the International Salt case.

The Court: All right.

Mr. Dixon: Here we submit that the Standard Oil Company is the largest producer and seller of petroleum products through retail outlets in the Western Area as a whole, and in every state in that area, with the possible exception of two, in which they rank or they come in second to one of the other companies that your Honor has frequently referred to and which is commonly referred to as the majors, as distinguished from the independents or whatever other classification may be given to other than the seven leading sellers of petroleum products in this area.

[fol. 2028] The Court: Let me ask you a question there.

Mr. Dixon: Certainly.

The Court: Aren't we confronted there with the situation, which is a little different, because there the court, while dealing with the antitrust statutes, was dealing with a tie-in contract which compelled the purchasers, as a condition of purchasing, to buy from them containers as to which they did not have any patent monopoly, and must not those cases be read in that light, remembering that beginning 15 years ago, even before the court condemned price fixing per se, but beginning with the paving case the court has held it will not extend the patent monopoly to allow a person to tie in with his monopoly the use of unpatented ingredients; a case which was later on followed in the Ethyl Company case, and the Apex Hosiery case, and similar cases, cases, however, which are modified recently to some extent by the Trans-Wrap case, where the court held that the rulings in those cases did not stand in the way of a patentee tying his licensee to an agreement whereby any improvements in the patent should belong to the patentee and be taken out in his name. That is the question covered, and it has rather a long decision.

Mr. Dixon: I think I understand, your Honor, and my answer is relatively short, that the vice that is condemned [fol. 2029] by the Sherman and Clayton Acts is the character of restraint, not the means whereby it is effected, necessarily.

Now, in the patent line of cases, and there, of course, you always have a tie-in type of case, where you are endeavoring to justify your restraint by making it a part of the field covered by your patent, under those cases if you exceed the limitation of the patent granted, that is, if you endeavor to tie in the requirement, as was done in the Salt case, with the use of an unpatented article as a condition to the use of your patented article, then you are clearly violating the law, the Sherman Act or the Clayton Act, because you have exceeded the limits of the patent grant conferred upon you at the time you got the patent.

Now, we submit that where you have no patent—I mean, in other words, the patent is used as a means of endeavoring to justify the imposition of the restraint, and that was precisely the defense that was raised in the International Salt Company case, where the Salt Company said, "Why, this is a perfectly legal restraint, because it is a part of the use of our patent monopoly," and the Supreme Court and

of course, the District Court had previously held otherwise. Now, if you have no patent at all, in other words, there is in the nature of a plea of confession and avoidance, and you certainly have no patent in this case, then if your contract operates to completely exclude all competition from the [fol. 2030] market, and that was what was being accomplished by the agreements in the Salt case, we submit you have an a fortiori case of illegality under both the Sherman and the Clayton Acts.

The Court: Let me follow up with another question. In those cases you start out with the idea that the court says that any such tie-in, regardless of the amount of commerce involved, appears illegal because of its effect, while here we have to start out with the idea that exclusiveness of handling is not in itself illegal, and I insist that that is still the law today. I have read and reread since we discussed the matter the Griffith case, and the other cases referred to, particularly the case you cited Friday——

Mr. Dixon: The Signoid case?

The Court: —the Signoid case, that is right. I have reread those cases.

Mr. Dixon: And the Oxford Varnish Company case?

The Court: What was that?

Mr. Dixon: The Oxford Varnish Company case?

The Court: That is right. I am still of the view that these late cases do not hold an agreement for exclusiveness of outlet is in itself illegal; that is, they are not illegal regardless of the effect they have in substantially affecting competition, and I am impressed by a paragraph in the Yellow Cab case which I didn't see the other day, but which [fol. 2031] I saw during the noon hour, and to which I referred before, where they say that a contract for exclusive transportation or exclusive control of transportation is not illegal.

Now, doesn't that call for a different criteria of result than the other cases?

Let me explain a little further what I mean. Can we here apply the rule so as to say that regardless of the fact that other companies were in the field and actually marketed through agencies of their own, through similar or other arrangements on these products, and that as a fact the percentage of these products, the petroleum products and accessories—there has been a distinction made between ac-

cessories, as used originally by us in the pleadings and as used by the representatives of Standard or the witnesses for Standard. They designate as accessories everything except tires, tubes and batteries. In other words, they would designate as such windshield wipers, hub caps, carburetors, and things like that,—but using the word "accessories" in the broad sense, the evidence before the court which was admitted over your objection does show that considering the entire field, whichever one of these accessories we consider, or if we consider the petroleum products, that the amount of trade controlled by Standard is a small percentage only of the commerce in those commodities within [fol. 2032] the area.

Mr. Dixon: Yes, I think I see your Honor's point.

The Court: Now, the whole difference between us lies there.

Mr. Dixon: That is right.

The Court: And do not designate that as a point, please. You have learned to know me now,——

Mr. Dixon: That is right, your Honor.

The Court: —and counsel for the defendants have known me for many years. I do not want to and I do not like to have any questions which I ask counsel in this kind of a discussion be taken as an indication as to how I am going to rule.

Mr. Dixon: Certainly.

The Court: I may ask questions one way and then rule the other way, and that is legitimate practice on the part of any judge. And you yourself know how often people have been disappointed in the Supreme Court and the Appellate Courts, because they assumed from the questions asked a certain attitude, and found not only the court, but the particular judge took a different attitude. The reason I give that warning is because I had a very unfortunate experience recently in a case which did not have any great importance legally, as a matter of fact: did not have 100 per cent the importance that this case has or the challenge that this [fol. 2033] case has, but because it involved the motion picture industry it was given a lot of undue publicity. I asked counsel a question, and in answer he forthrightly said, "No." I asked if he knew of any law which authorized a judge or an administrative body to ask a witness a question and insist that he answer it "Yes" or "No" without

giving him a chance to explain, and he answered, as I say, forthrightly: "No." That is all that happened. I didn't rule on anything. But that was made the cause of publicity, and my own daughter in New York read on the front pages of a paper there that I had ruled that Congress could not ask that particular question, which wasn't what I had ruled at all, because the question wasn't even before me.

So I have become, I would not say I have become more cautious, but I try to avoid such misunderstandings, because they are not pleasant; in the particular instance I referred to it went so far as to be editorialized by a very good friend of mine, Mr. Judge Holland Palmer, who himself published a long editorial on this supposed ruling, until I finally was compelled to send him the transcript and show him there was no ruling. Of course, newspaper men and editors never change their editorials, so whether I have convinced him or not, I don't know, but he never wrote a correcting editorial stating that I did not make any such ruling.

[fol. 2034] For that reason I am making this particular statement now so that there will be no misunderstanding as to what I am doing. I am merely asking questions to clarify my own thought, because if your contention is correct, then, regardless of the fact that the actual sales in the field of these commodities, petroleum products and others, —regardless that their money value amounted to a small percentage only of the commerce in these commodities in these states, the mere foreclosure of these particular markts you say is illegal. In other words, I am asking the question whether, in determining what is or what is not substantial or in determining what is or what is not unreasonable, I am limited only to the number of outlets which are foreclosed, or can I take into consideration the overall picture and include, as an effect of the restriction, the quantity in products which are controlled, so you say, by this exclusion? That is the problem.

Mr. Dixon: In answering your question, your Honor, I answer it perhaps, as best I can say, by giving you our view directly and applying that we feel, as our position, that if your Honor concludes that the amount of commerce which we have shown to be subject to the restraint here, namely, the $67,000,000 worth of commerce for the year 1947 in petroleum products, tires, tubes and batteries is a substantial amount of such commerce, then your Honor is not con-

[fol. 2035] cerned with how much of a percent of the total amount of such commerce that amount may constitute.

The Court: In other words, you would depart from the words which, I think it was, Judge Hand used, and, some of the other circuits, and I am following only cases that have the approval of the Supreme Court, like the first Aluminum case, and others which are cited by the Supreme Court, that the restraint may be localized to such an extent as to outlets, that even though the percentage of control affects a portion only of the commodities, nevertheless it is exclusive——

Mr. Dixon: That is right.

The Court: ——as to 7,000 outlets, and that the percentage, in effect, of the commerce becomes immaterial.

Mr. Dixon: That is right; on those facts, your Honor.

The Court: Have I given you the thought?

Mr. Dixon: Yes.

The Court: Because these statistics do show, and I forget the exact percentage, that the other companies still control something like 90 per cent of the sales in volume.

Mr. Dixon: Well, let me pose this possible answer or situation, your Honor, in further reply to your question. The Sherman Act is concerned, as your Honor well knows because you have decided many cases under the Sherman Act, with the maintaining of our system of free competition, [fol. 2036] and it looks with disfavor upon restraints, generally speaking. But as the law requires that a restraint to be illegal under the Sherman Act must be proved to be an unreasonable restraint,—that is the qualification in the Standard Oil case, and so on, of 1911, and in previous decisions, so the question arises that not all restraints are illegal. It is only those restraints which are unreasonable.

Now, upon that premise, that is the obligation of the government, to prove that the restraints here are unreasonable under the Sherman Act, and also have the purpose, in effect, as set forth in Section 3 of the Clayton Act to preclude or, I mean to completely eliminate competition from a substantial market. And whether a market is substantial is a question of fact, I mean in the last analysis and in law. But where you operate to exclude all competition from what the law calls, or the courts call, as a question of fact, a substantial market, then you are to that extent interfering with

the operation of the forces of free competition, which is the thing which the Sherman Act was passed to protect.

Now, to come down to the particular question, if we are to compare, or, I mean if we are to adjudge the reasonableness or unreasonableness of this restraint, and I think it perhaps is not even open to dispute, at least, in our point [fol. 2037] of view we submit it is not, that there is a restraint on this market by these exclusive dealing contracts, that where you have a restraint of that character that affects a market of substantial volume, dollar volume, that that becomes, then, illegal per se.

Why? Why, because of its tendency to monopolize. In other words, your Honor has already suggested, and I believe the record shows here that five or six of the other companies that compete with the defendants in this case for the petroleum products business and automotive accessories business at these outlets use similar or substantially similar types of contracts.

The Court: I suggested, or I said that there is evidence to that effect.

Mr. Dixon: There is, your Honor.

The Court: And they brought in their own forms which, in substance, contain similar restrictive conditions.

Mr. Dixon: So what would happen, if the court please, if we are to adjudge the legality of this restraint by comparing it with the total business done by the competitors of the defendants in this area? Then, in practical effect it means that, say, seven companies can completely control all of this business, and no one else would ever have a chance to get into the business or to compete for their market that is completely sewed up by this type of contract.

[fol. 2038] The Court: Of course, if they do so individually, the mere fact that it has that result wouldn't make them guilty of a conspiracy. If they did that as a result of a conspiracy, you can charge them with conspiracy.

Mr. Dixon: My point is that the Clayton Act was aimed directly against that sort of possibility, when it says any restraint which tends to create a monopoly or to substantially lessen competition. And if you take the 12 per cent, or whatever the percentage of this market is, out of competition, certainly you have tended to substantially lessen competition for that market, for those products, and have tended to create a monopoly, because if you go on with this

king] of practice of 12 per cent, 14 per cent, 15 per cent, the tendency is the thing which the Clayton Act condemns.

The Court: That is true, but if you adjudge it merely by outlets, and supposing that Standard went back to the system of having only what has been called here employee-operated agencies, that would exclude as effectively the others, because they could market in their own places their own products.

Mr. Dixon: That is right. But that is not the system that they choose to follow, your Honor. They chose deliberately to get away from that system, and they chose to make every one of the dealers, and I again stress this term, independent [fol. 2039] businessmen, and that is quite a different proposition from Standard selling its own products or dealing with persons who want to sell them products. Here they are preventing the operators of these outlets from exercising their independent judgment on the purchase of any of the commodities that they are required to purchase solely and exclusively from Standard Oil Company, and that is the same type of restraint that is referred to in the Yellow Cab case, and, if I may, and if your Honor will just bear with me a moment,——

The Court: I will take my time out of your time.

Mr. Dixon: All right, your Honor. Thank you. I am reading from page 226 of 322 U. S., as follows:——

The Court: You mean 332 U. S.?

Mr. Dixon: 332, U. S., yes, your Honor, at page 226.

The Court: That is right. It is the advance sheets.

Mr. Dixon: And I quote:

> "* * * By excluding all cab manufacturers other than CCM from that part of the market"—this is a part of the market—"represented by the cab operating companies under their control, the appellees effectively limit the outlets through which cabs may be sold in interstate commerce."

Then continuing, in addition to that,—they have done that, they have limited the outlets, the possible outlets for [fol. 2040] sales in interstate commerce; but in addition to that, they have, and I quote:

> "In addition, by preventing the cab-operating companies under their control from purchasing cabs from manufacturers other than CCM, the appellees deny

those companies the opportunity to purchase cabs in a free, competitive market. The Sherman Act has never been thought to sanction a conspiracy to restrain the free purchase of goods in interstate commerce."

Now, if I may briefly paraphrase that language to the facts in this case, we could say that the Supreme Court could write an opinion in this case,——

The Court: They probably will ultimately.

Mr. Dixon: —as follows:

"By excluding all petroleum and automotive accessory manufacturers other than Standard from that part of the market represented by the dealers under their control, Standard effectively limits the outlets through which petroleum products and automotive accessories may be sold in interstate commerce. In addition, by preventing the dealers under their control from purchasing petroleum products and automotive accessories from manufacturers other than Standard, Stand- [fol. 2041] ard denies those dealers the opportunity to purchase products in a free, competitive market."

The Court: Give me the page of that again, please.

Mr. Dixon: It starts on page 226, your Honor, and ends at the top of page 227.

The Court: Have you finished? I mean, are you through with that portion? I want to ask you one more question.

Mr. Dixon: Yes, your Honor, I am through with that portion.

The Court: Here is one question: In the Standard Oil case, the original case, the case which introduced in 1911 the concept of reasonableness for the first time under the statute, the court in defining what reasonableness is—I don't want you to think that I have so wonderful a memory that I remember this, but I want to say I read it at noon today—the court says, in effect, that what is reasonable or not is a question to be determined with relation to the facts in each case. In fact, there is a portion there which I can almost quote verbatim, in which they said that Congress had established the boundaries, but had left the limitations to be determined in each case in the light of reason, and the principles of law, and so on, and so forth.

I think I have given you a fair resume of that particular portion of the opinion.

[fol. 2042] Now, the question is this: Can we in a case of this character leave entirely out of consideration the quantum of commerce in these commodities in an area and determine unreasonableness and substantiality solely on the basis of the number of outlets which are the subject of these contracts?

Mr. Dixon: I think you are limited to this extent by the recent decision of the Supreme Court: You shall take the number of outlets, the number of agreements that are involved, and the actual amount of commerce that is involved. In other words, it might well be that you might in certain cases have two or three thousand agreements of this character—I don't mean in the oil business, because you could not have in the oil business or, rather, not have them operate—but, in some other industries, and not be an actual restraint of commerce because there would not be a substantial amount of commerce involved.

I mean that is the burden the Government has in this case is to still convince the court—I mean present facts from which the court may conclude that a substantial amount of commerce is affected. I do not mean to indicate that your Honor does not have discretion in passing upon that question, because the burden is with the Government under the International Salt case to show that a substantial amount of commerce has been affected.

The Court: But you would limit my determination to "substantiality and the amount of commerce involved in [fol. 2043] the restraint," not merely to the relation of that commerce to the free commerce.

Mr. Dixon: Correct, your Honor. And may I suggest that in the Salt case, of course, there are many other salt companies, as your Honor knows, perhaps sell salt in the United States besides the International Salt Company. Now, there was a comparison made there in that case, nor was it ever even considered in the District Court or in the Supreme Court as to whether or not the $500,000 worth of commerce in salt that was held to be restrained both by the District and the Appellate Court by those agreements was to be determined, as far as determining whether it was a substantial amount of commerce or not, by putting it in its context with the total amount of salt that would be sold in

the industry in the United States; or, assuming in this case, in the area in which the contracts operate.

The Supreme Court in the Salt case held, we feel and we submit that the reading of the opinion so indicates, that a substantial market as a matter of law is involved when you have facts comparable to those which you have in the International Salt case, namely, when you have shown that you have a substantial amount or number of agreements that are used to effect the restraint; second, that a substantial, using the same term, or that a large dollar volume of commerce is subject to that restraint and that it is inter-
[fol. 2044] state in character. Having shown that, under the decisions in the Salt case and, we feel, also the Yellow Cab case is directly in line with the same view, the Government has met the burden of proof to show that where the contracts exclude all competition from that market, your Honor—I am emphasizing that word "all"—I mean excluding all competition, because if that were not the case then you would have a different factual problem, perhaps, you might be open to consideration of what percentage of this commerce Standard had with relation to the total amount and various other matters, but where you have a complete exclusion of all competition for that market, we submit that a showing that the market excluded from competition is a substantial one in dollar volume, under the Salt case that is sufficient to make the restraint illegal per se without a further showing.

As I again point out, both in the District Court in the Salt case and in the Supreme Court there was no evidence nor was there any comparison made. The only criteria that the court applied was, on page 394, that the International Salt Company is the country's largest producer for industrial uses of salt, and that they sold approximately 119,000 tons of salt in the year 1944 for about $500,000 worth of business.

And then the court says, page 396:

> "By contracting to close this market"——
> [fol. 2045] What market? Why, the $500,000 market.
> "for salt against competition, International has engaged in a restraint of trade for which its patents afford no immunity from the Anti-Trust Laws."

And then going on in the same opinion the court says the volume business affected—and that comes directly to the question your Honor posed a moment ago—

> "The volume of business affected by these contracts cannot be said to be insignificant or insubstantial and the tendency of the arrangement to accomplishment of monopoly seems obvious."

In other words, if we read that language correctly, the Supreme Court is saying, certainly insofar as the Salt case is concerned, that $500,000 worth of business in salt affected by the contract cannot be said to be insignificant or unsubstantial.

The Court: If you have reached a good stopping point, I will give you a good recess.

Mr. Dixon: Thank you, your Honor. It is a good place.

The Court: All right; recess for 15 minutes.

(Short recess.)

Mr. Dixon: I might say a word or two more about the Salt and Cab cases, your Honor, and then I will proceed to a discussion of some of the evidence in the case.

[fol. 2046] The language of the court in the Salt case that we believe is particularly significant is also contained on page 398, where the court is again discussing the character of the restraint, and states:

> "but it is admitted that, at times, at least, competitors do offer such a product. They are, however, shut out of the market by a provision that limits it, not in terms of quality, but in terms of a particular vendor."

And I emphasize the last portion of the quotation from the opinion: That they are limited in this case in terms of a particular vendor, namely, the Standard Oil Company; and they are precluded, as they were in the Salt case, from purchasing at any time. In the Salt case there was a provision in these contracts, your Honor will recall, that permitted competitors of the Salt company to furnish the salt where the Salt company itself could not do it. The court held that that did not operate in any sense of the term to make that which was otherwise illegal legal, since they could impose the restriction at any time that they saw fit, and that it did not operate to limit all competition as to salt.

The Cab case does deal, in parts of the opinion, with the question that your Honor posed a moment ago about this comparison of percentage of Standard's business to the total business done by the competitors in the area. I be- [fol. 2047] lieve the significance of the Cab case lies in the fact that it presents the "appreciable segment" test of the market, rather than whether or not you have in fact a percentagewise control of the market. And the appreciable segment test, in a sense, is perhaps a departure from the prior cases or the prior rulings of the courts on the question of whether or not you have a violation of Sections 1 and 2 of the Sherman Act when you show that only a small part, relatively speaking, of the total commerce involved or business involved is subject to the restriction.

In connection with that perhaps I should refer your Honor, if you are interested, to a recent article or an article in the Columbia Law Review for September of 1947, on page 928, where reference is made to the decision in the Yellow Cab case.

The Court: I do not have it. I only get Harvard and the two California Law Reviews. I can get it at the library.

Mr. Dixon: That is right.

The Court: What is the page?

Mr. Dixon: 928 of the September, 1947 volume of the Columbia Law Review, where a discussion is had concerning the importance of the appreciable test as laid down in the Yellow Cab case.

Then, your Honor, I believe, is already acquainted with the recent language or the language used by the Supreme [fol. 2048] Court in some of the movie cases and the Morton Salt case. It is true it is not decisive, perhaps, of the question involved in this case, but it nevertheless is illustrative of the general principle which the Supreme Court applies in determining whether violations of the Sherman Act or the Clayton Act exist on a particular set of facts.

In the Paramount case, for instance, a recent slip decision, on page 35 language is found again which illustrates the point I just mentioned about appreciable segments of a business, in which the court says:

> "'Any part' is construed to mean an appreciable part of interstate or foreign trade or commerce." Citing *United States* v. *Yellow Cab Co.* case.

And then the general language of the Supreme Court in the Griffith case, on page 7, slip decision:

"The Anti-Trust laws are as much violated by the prevention of competition as by its destruction."

A reference is made to the Aluminum case that your Honor has just referred to and the opinion of Justice Hand, Learned Hand, in that very important decision on monopoly. But here we do have, if I may digress or use a monopoly term, an actual monopoly by Standard of an appreciable segment of this business in the western area, applied specifically to the facts of this case. We are, however, not charging Standard here with having a monopoly of all of the [fol. 2049] business or a monopoly of the petroleum business or of the automotive accessory business, but we do charge that they have monopolized by these contracts an appreciable segment of that business in this area.

In other words, the $68,000,000 worth of petroleum products, tires, tubes, and batteries does, we believe, even if your Honor feels that you should make the comparison suggested by the defendants, that that nevertheless would be an appreciable segment of that total business and, to the extent that all competition has been eliminated for that business, you have in fact a monopoly of an appreciable segment of that business in this area.

Now, that is, of course, important under Section 3 of the Clayton Act where the tendency to monopolize is the vice and violation of the law.

In other words, the act which tends to effect the monopoly or which tends to substantially lessen competition becomes a violation of the Clayton Act, Section 3; and, of course, where it effects an unreasonable restraint to trade as we claim it does under the decisions and the principles of the International Salt case and the Yellow Cab case, you have a definite violation of the Sherman Act also on the ground that the restraint excluded all competition from a substantial interstate market for the products involved in this case.

[fol. 2050] Now, passing now rather hurriedly to a discussion of some of the evidence in this case, I believe I have previously suggested to the court that the government does not feel that it was necessary to prove by this evidence the practical effect of these contracts in operation. How-

ever, if your Honor deems proof on that phase of the case essential, we submit that the record in this case clearly shows that the contracts involved here have operated to have the effect charged in the complaint.

Let us take, for example, the petroleum products phase of the business. We have there the testimony of Mr. Ellis on page 347 of the record, who solicited the business of a Douglas station and sold them some products, Pennzoil and Quaker State. Then that station was changed to a Chevron station, and when he went back to solicit some more of that business, of course, he didn't get it. Then he went to another station operated by a Mr. Mortimer, and this appears in the record on page 351, where that transaction is discussed, and he was told to pick up his containers after that station became a Chevron station, and the competitive products with Standard that had previously been sold there and which were, in fact, sold for a short time after it became a Chevron station because of customer demand, were eliminated from that station.

However, perhaps as good an example of the effect of these contracts on the oil phase of this business is shown [fol. 2051] by the documents of the defendants themselves. I refer specifically to Exhibits 23 and 24, and all of the parts of those exhibits. Exhibit 24-A, for example, is a letter on the letterhead of the Standard Oil Company of May 19, 1947, to Mr. Thompson from Mr. Cuyler concerning the sale of T5X, a competitive product with RPM, the motor oil of the defendants, and this notation appears in pencil on this exhibit:

> "Please write the districts concerned, each account separately and ask them to set up the truck station operators to follow through and ask for a report which will indicate when each of these accounts is operating in line with commitments on our products."

And then the notation following the initialed signature, "Please let me see the results."

Well, the reports show that the results were that the competitive oils at these dealer outlets, operated supposedly by independent businessmen, were eventually completely eliminated from those stations.

Exhibit 23-S, for example, deals with one of these other stations, and the operator, who had been contacted by one

of the Standard Oil supervisors or men, whose testimony indicated he visited the Chevron dealers from time to time, and the operator reported in this exhibit 23-A to the [fol. 2052] Standard supervisor that he will discontinue the handling of these lubricating oils if one of the other stations that was also handling it would also discontinue handling it. He states according to this exhibit, "We will be very much disappointed if the Santa Maria Truck Station does not discontinue, as we have, and soon."

In other words, I believe this document, or type of document, your Honor, illustrates better than anything that I can say that the tendency of these contracts is to monopolize or to bring into effect a monopoly by eliminating the competition theretofore in existence at that station with competitive products which were demanded by customers who came to that station asking for the product which was ultimately eliminated by reason of these contracts.

The further exhibits, and I direct them to your Honor's attention, deal with similar situations.

This testimony is corroborated by witnesses which the government submitted. Mr. Mortimer, for example, was questioned at page 394 of the record with reference to his handling TX-5, and he said, or, he was asked:

"Q. Why did you handle this oil?
"A. Due to customer demand."

Then follows some further testimony, and he says that he was asked to dispose of a barrel of this oil by the Standard Oil supervisor, Mr. Burke, and not to replace it. [fol. 2053] Then on cross examination, on page 396, he was asked:

"Did the time come when you ceased to have demand for that product"

And the answer was: "No."

Then we have the testimony of Mr. Russell Garett Stephens, which appears on pages 513 through 518 of the transcript, and I quote from just a portion of that testimony. After he had been asked about having competitive oils on his property, the question was asked:

"What happened and what was said?"

And the answer was as follows:

> "Well, after an inspection of my station by Mr. Westbrook, he found approximately six cases of Quaker State Oil partially hid in my lubrication room and immediately come to my office, called me into my office, rather, and said, 'Mr. Stephens, I wasn't kidding you last month when I was out here about discontinuing the handling of Quaker.'"

That is very illustrative, we submit, of the effect of these contracts in completely closing these outlets to all competition; in this instance all competitive lubricating products. The testimony of Mr. Johnson, in the record at page 291, is along the same lines, and numerous other witnesses testified [fol. 2054] concerning the oil situation tie-in with that type of testimony.

Now, one of the things which resulted from this check by the Standard Oil Company, and which again illustrates the way in which competition is in fact eliminated, as shown by these witnesses, and, further, by which a tendency through these practices to monopolize is clearly illustrated is that after the supervisors for Standard had been around to these stations and checked and found the competing oils there, that they got the names of the customers who were asking for those products and then proceeded to go around and sell them on their products, after the competitive product had been eliminated from the Standard outlet subject to the contract restriction.

Now, of course, that is perhaps a very small part and you might say of no importance in this case, but it does suggest that through these contracts, where the customer demand exists for competitive products, and I believe their own records show that, as well as the testimony offered by the government, that these contracts give Standard a way to come in and not only eliminate that competition, but to convert that business to their own products.

Well, what about the situation on tires? One of the examples there, again, was of another Mr. Stevens, who spells his name S-t-e-v-e-n-s, and not this time Mr. Stephens, as the former witness I just described, and who [fol. 2055] was a Chevron dealer operating a station, or, rather, he was a solicitor or distributor of the Pennsylvania Rubber Company for tires, tubes, and batteries, and

he called on a Chevron dealer, at Harry Naylor's, at Knolls, Utah, and he had sold him over $1300 worth of tires in April of 1947. This outlet was out on the desert, and apparently it had been an outlet that the Standard supervisors had overlooked from the point of view of stocking it with a large amount of tires, because the record here shows that this station sold what would be a relatively large amount, I believe, of tires for a station of that character, over $1300 worth in a very short period of time. This business was eliminated when Mr. Stevens went back in July and asked for some more business, and he was told he would not be able to handle—that is, Mr. Naylor, the Chevron dealer, would not be able to handle the Pennsylvania Rubber Company's products or tires any longer, that he was sorry, he would like to give him some more business, but he couldn't do so.

Now, the TBA contract in evidence in this case on this station, of course, in this instance effectively operated to eliminate not only that business of the Pennsylvania Rubber Company, but all competition in the future, not only from that company which had previously been selling that station but from any other manufacturer of tires or comparable products subject to these agreements as well.

[fol. 2056] Then we have the testimony of Mr. Willard Snow on page 618 of the record. He was a sales representative for the Kelly-Springfield Tire Company at Salt Lake, and his testimony shows that he came to one of the outlets and met a Mr. Reynolds, and that was one of the Chevron outlets, and on page 618 of the record we find his testimony, that Mr. Reynolds said that the Kelly-Springfield tires should not be displayed in the same place, and where they would be in actual competition, competitivewise, with the Atlas products, and his quotation was, according to Mr. Snow, and this was not disputed in the record:

> "We do not permit a Chevron station handling Atlas products to handle other than Atlas products, or we will take their franchise away from them."

Of course, we submit that whether they can take their franchise away or not is immaterial, because the contracts in this case do contain cancellation clauses, and, of course, it is not necessary to give the dealers any reason of any kind as to why the contract is canceled when the company

desires to cancel. Of course, the same privilege exists in the dealer, perhaps; but I submit that the situation is not on a comparable basis from the point of view of having a right to a reason for cancellation, if the dealer desires to continue to operate that outlet under circumstances that are otherwise satisfactory.

[fol. 2057] Then we have the testimony of Mr. Emerson, a former Standard Oil employee for a number of years on automotive accessories. Your Honor will recall that he took over a Chevron station, operated it for several years, and then finally resigned to go into the business of selling wax and polishes for automobile accessories. But while he was getting ready to leave, the testimony shows at page 942 of the record that he had stocked a large number of competitive items, including some fan belts manufactured by the Gates Manufacturing Company, and that Mr. Krisel looked over the stock of Gates' belts that Mr. Emerson had, which was rather large, and told Mr. Emerson, "You will have to get rid of those Gates belts before the new owner comes in."

Well, of course, he got rid of them. That, again, is of import, your Honor, only in showing that under these contracts it did operate to exclude all competition from this market.

Now, the fact that Standard Oil Company said that during the war period they permitted the dealers to purchase products and accessories from other sources we submit is in no way relevant to this case. And if that were the fact, then, of course, Standard should not object to having a decree entered in this case, in accordance with the Government's request, opening up this market to competition, because that is all the government is asking in this suit. But, [fol. 2058] of course, when business became better and Standard was then in a position to furnish tires, tubes and batteries and accessories to these dealers who had previously been able to go out and buy competitively where they could get it, and could perhaps be sold competitively on the theory that the sellers or manufacturers of competitive products would continue to have their business when times got better, when there were more products on the market, but those dealers were told that the time had come for them to cease buying from pie wagons, as they were called, and to take Atlas products. Well, that is but natural,

and I say that because the contract gives them that right. These are exclusive requirement contracts in practically all phases of the business that is involved here, and the provisions that I mentioned at the outset in these contracts gives Standard the right to temporarily waive, or, I do not mean gives them the right, but it clearly provides if they do waive these provisions, as they did perhaps during the war out of necessity because they couldn't supply them themselves, why, they could reinstate them, and they did reinstate the requirements' provision at their option and pleasure. The power is there at all times under these contracts, your Honor, to determine from whom these dealers shall buy.

Now, the defendants perhaps will argue that this does not apply to automotive accessories other than tires, tubes [fol. 2059] and batteries. I think the testimony here shows from one of the Standard witnesses, on cross examination, that until two months ago or since about two months ago that Standard would not sell any automotive accessories to any dealer unless he signed a TBA contract. In other words, if they wanted any accessories from Standard, even though this TBA contract purports to give them the privilege of buying elsewhere, nevertheless they couldn't get them unless they signed up on the full line enforcing contract, namely, the TBA contract, which required them to purchase all of their tires, tubes and batteries from them, and then had this other provision in it that made it optional with Standard at its pleasure to supply them with such other accessories as the dealers might have occasion to want from or through Standard.

Well, that is as broad as it is long, in our opinion, and that is typical of a tie-in requirement such as in the contract which your Honor has mentioned, insofar as the automotive accessories are concerned as distinguished from tires, tubes and batteries, and that provision falls along with the rest of the provisions in this contract.

In any event, in the relief which the government is asking for in this case, assuming your Honor holds the rest of these contract provisions illegal, certainly the defendants could have no objections to making it clear to the dealer [fol. 2060] that this provision means that they can purchase these accessories elsewhere from any competitive sources, if they care to do so, at any time, without any tie-

in requirement or any bonus tie-in requirement of the types that have been submitted in evidence.

The Court: In other words, they put them on a voluntary basis, like the restrictive covenants of which the court spoke recently?

Mr. Dixon: The Supreme Court.

The Court: Yes.

Mr. Dixon: I think your Honor clearly understands the purpose of this suit is to open up this market which we claim has been restricted or, rather, that Standard has monopolized through these contracts.

Now, some of the media of accomplishing this, while it isn't perhaps too important to this case, nevertheless, some of the means are described in the complaint, in what we have referred to frequently as financial inducements. Some exhibits have been put in evidence concerning that type of practice. I am not going to go into them, but they are Exhibits 16 through 22, which are illustrative of this sort of thing. But referring to one of those exhibits, for example, Exhibit 16, it shows a case where $4,000 was loaned supposedly to the dealer to construct a service station, and a mortgage note was given back by the dealer to the Stand-[fol. 2061] ard Oil Company, payable in a certain percentage, or $20.83 per month, without interest. That is Exhibit 16-E, but accompanying that exhibit or mortgage and mortgage note was Exhibit 16-F, a letter of confirmation and waiver, under date of April 10, 1945, which provided that if the sublease remains in full force and effect during its term, and all rental due thereon is paid, Standard agrees to cancel the promissory note and surrender it and release the mortgage.

In other words, your Honor, this is perhaps another example of the way in which the contracts are tied in and the dealers are obligated, and inducements are given to them to comply with the contracts. So that, if there was any violation of the contract resulting in the cancellation of the lease and, of course, the lease would have such a provision, as shown by the exhibits, then the dealer would lose the $4,000 supposedly loaned to him under the non-interest-bearing type of arrangement, but if he went through all the way, then the property represented by the $4,000 loan to construct the service station became the property, in fact, of the dealer on the expiration of the lease.

Now I want to just briefly discuss a couple of the exhibits of the defendants, and then I am through, your Honor. Your Honor will recall that we had or that there was submitted in evidence Exhibits V and Y, which dealt [fol. 2062] with the so-called competitive service station report or analysis covering the Los Angeles Basin Area and the San Francisco Bay Area. I think I pointed out that these exhibits, which purport to cover Chevron and Standard Stations in those areas, and the percentage of the gasoline which they enjoy in that area, covered 454 of the Standard Oil outlets, I mean of their total outlets, and only 363 of the dealer outlets. There are 1,063 Standard-operated stations, and there are 5,939 dealer outlets. So at the outset, if your Honor feels that they have any relevancy at all, we submit that they do not have, but if your Honor feels they do, we then suggest that they are not, first, illustrative of the market that is involved in this case, and we are dealing here with the market of the Chevron dealer, and this document deals only with, or, these two exhibits deal only with 363 Chevron dealers, or approximately a little over five per cent of the total number of outlets we are talking about in this case. But if your Honor should still feel that nevertheless is immaterial, we direct to your Honor's attention the figures in these exhibits. The total gallonage sold through the Chevron dealers on these exhibits on a monthly basis is 39,425,855 gallons. Mr. Travis testified on page 1,232 of the record that these figures were on a monthly basis. Now, on an annual basis, then, the total gallonage of the Chevron dealers in the San [fol. 2063] Francisco Bay and the Los Angeles Basin Area, multiplying the monthly figure of 39,425,855 gallons by 12 would be 470,110,260 gallons for the San Francisco Bay and the Los Angeles Basin Area for the year 1946, or for the year in which this was taken.

Now, if your Honor then will compare that with Government's Exhibit 9, which shows the total amount of gasoline sold by Standard to dealers, it will show 135,455,124 gallons for the entire State of California. So there is a discrepancy between these figures on these exhibits of over 334,655,136 gallons.

Now, we suggest, as I said, that these exhibits are of no import to begin with; and are irrelevant and immaterial. But if they are to be regarded by your Honor, we submit

that on the testimony of this record they do not furnish the basis of any factual finding that this court may make on any phase of the case that may depend for its basing or foundation on these two exhibits.

Now, coming to these other exhibits, the type of exhibit Z, and related exhibits, that were made by Mr. Dern, or concerning which he testified, I want to point out that in connection with those exhibits the estimates or these trend charts, so-called, that were prepared by Mr. Dern took the total gallonage figures from all sources, the taxable gallonage of the states in most instances, as a base for determin-
[fol. 2064] ing the percentages of Standard's gasoline for the purpose of making these trend charts that were put in evidence, and that he testified on page 1252 of the record that the gallonage included in these State totals which does not pass through retail outlets would be gasoline that went to industrial plants, or commercial establishments, or to agriculture, or something of that kind, and that his answer on page 1253 is, "Provided that is taxable, yes."

[fol. 2065] If we are to have any comparison here or anything at all to be drawn from these charts, your Honor, showing the trend, we submit that you must have a reliable comparison between a known factor, at least, and another known factor, not based upon all of the gallonage which is taxable in that state, but that the only test that can be made from a point of view of comparing the two, namely, the amount of gasoline sold by Standard through its outlets, company-owned or Chevron dealer outlets, with the total amount sold through all retail outlets would be to have that fact disclosed in the record, and that did not appear; but, rather, the figures upon which these trends have been based in part, at least, are figures which relate to the total amount of taxable gasoline sold in the area, which includes industrial gasolines not sold, obviously, through retail outlets.

We are commenting only upon these two exhibits, feeling, as we do, that they are irrelevant and immaterial, but we are pausing only to point out that if your Honor still feels that they merit consideration in any view of the case which your Honor ultimately takes here, that there are certain factors in connection with these exhibits that we suggest make them unreliable from the point of view of being any

basis for any ultimate findings of fact which your Honor may make in this case upon any issue of fact involved.

I think, your Honor, that I have come to a good stopping [fol. 2066-2067] place and I am ready to call it quits for our argument in chief for the day.

The Court: You have concluded your opening argument?

Mr. Dixon: Yes, your Honor.

The Court: You will have the close, of course.

Mr. Dixon: Yes, your Honor.

The Court: All right. We will take, gentlemen, our adjournment to the regular hour in the morning, and I shall adjust the time tomorrow depending upon the progress we make.

(Whereupon, a recess was taken until 10:00 o'clock a.m. of the following day, Thursday, May 27, 1948.)

[fol. 2068-2069]

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

HONORABLE LEON R. YANKWICH, *Judge Presiding*

Civil Action No. 6159-Y

UNITED STATES OF AMERICA, Plaintiff

vs.

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., Defendants

REPORTERS' TRANSCRIPT OF PROCEEDINGS

Los Angeles, California
Thursday, May 27, 1948

Appearances: (As heretofore noted.)

[fol. 2070] Los Angeles, California,
Thursday, May 27, 1948, 10:00 A. M.

ARGUMENT ON BEHALF OF DEFENDANTS

The Court: Proceed, gentlemen.

Mr. Hall: May it please the court: Counsel in his opening argument yesterday has referred to the contract said to be involved in this case. We may at the outset properly remove from consideration the distributor's agreement, which is Exhibit 2. Government's Exhibit 6 shows that the use of that agreement was discontinued in September, 1944; that in March of 1947 there were 556 of those agreements outstanding, and that as of a later date, a more recent date, the number has been reduced to 232. So that the authorities cited on page 2 of our brief are applicable to the effect that where a practice has been abandoned before suit is instituted, and there is no showing of any probability that the practice will be resumed, there can be no injunction with respect to such practice. And certainly in this case there is no showing in the evidence that there is any purpose or intent or probability that the distributor's agreement will be put back in use.

This case involves certain separate categories of products, and it will be our contention that the effect of the contracts must be ascertained with respect to those separate products: first, gasoline; second, lubricating oil and other petroleum products like greases; third, tires; and [fol. 2071] fourth, accessories.

Before proceeding with the main argument, it may also be proper to point out that the Standard Stations, that is, the company-operated stations are not involved in this suit. I think that fact is well understood.

The Court: I think Mr. Dixon so stated.

Mr. Hall: The reason that I mention that, your Honor, is that Mr. Dixon referred to 7,000 retail outlets. He could have referred to 7,000 only if he had included the Standard Stations, the company-operated stations.

The Court: Well, he gave that list, and as he gave it, I took them down in order, one, two, three, four, and five, and they didn't cover, as I understood them, the employee-operated stations, because in the order given No. 1 was dealer agreements, No. 2 was distributor agreements, No. 3 was petroleum products and equipment agreement, No. 4

was TBA, and No. 5 was subleases, and the figure he gave was some 7100 covering these five categories, and I didn't remember the inclusion among them of any company-operated stations.

Mr. Hall: I am sure he did not intend to include them, but his figure of 7,000 would include the company-operated stations, and it included also the open accounts, which, I take it, are not involved in this proceeding because with respect to the open accounts, there were no contracts or [fol. 2072] leases of any character whatever. So it is much more proper to use a figure of 5,000 as the number of outlets involved than it is to use a figure of 7,000.

Now, the government——

The Court: Let me ask you this before you go on, so that we will agree on figures. Government's Exhibit 6 has under item A, as a total of leases, subleases, dealer agreements, dealer agreements TBA, and petroleum products agreements outstanding as of March 12, 1947,——

Mr. Hall: Yes.

The Court: And that total was 10,533.

Mr. Hall: Those are the agreements outstanding, your Honor,——

The Court: Yes.

Mr. Hall: But your Honor will recall that in the case of a given service station, there might be more than one agreement. There may be a lease and there may be a dealer agreement, or there may be a sublease and a petroleum products and equipment agreement.

The Court: What is there in statistical form that gives the correct number?

[fol. 2073] Mr. Hall: Before I leave this Exhibit 6, your Honor, if it is before you, may I point this out? Have you Exhibit 6 before you?

The Court: Yes; that is what I was looking at.

Mr. Hall: On the first page of the exhibit that is the number of documents outstanding, but the first document referred to, the lease, the lease has no bearing whatever upon this case because that is the lease under which Standard Oil Company acquires the property as lessee. It is not the lease made with the dealer. So that the top horizontal row of figures on that exhibit should be eliminated if you desire the entire number of documents outstanding.

Now, if your Honor will turn to Item C in that exhibit—

no; Item D in that exhibit, you will see there a recapitulation of the number of stations involved; and your Honor will see that the stations that have leases or contracts are shown on the first page of Item D and that the total was—it has not been totaled on that exhibit—but the total is 5,197. Those are the stations that have either subleases or agreements of some kind.

Then, on the next page, page 6, your Honor will see the open accounts listed, 742 of those; and following that your Honor will see the number of Standard Stations listed, 1063.

The Court: That is right. 5,197, let us take that. I am interested in those.

[fol. 2074] Mr. Hall: The total of page 5 on that exhibit, your Honor, of the right-hand vertical column, is 5,197.

The Court: What total is that?

Mr. Hall: That is page 5, the right-hand column, that total.

The Court: The last one, the total?

Mr. Hall: Yes, 5,197; and that is the number of stations involved that have some leases or agreements.

The Court: All right. His correct total, as I added it up while he was giving the figures, was 7,145, and, as listed under these three groups which he gave: Dealer agreements, 1,556; distributor agreements, 556; petroleum products and equipment agreements, 912; dealer agreements TBA, 2,221; and sublease agreements, 1,800. Those are the figures I took from yesterday, which correspond to page 1.

Mr. Hall: I assume that he gave those figures as the number of agreements and leases outstanding.

The Court: Outstanding as of March 12th.

Mr. Hall: But that is not the number of service stations, because there was a doubling up, your Honor, or a tripling up.

The Court: I see. I am glad you called that to my attention because I did not get that distinction from the list he disclosed.

Mr. Hall: At any rate it is all in Government's Exhibit 6.

[fol. 2075] The Court: All in Government's Exhibit 6; all right.

Mr. Hall: The Government's position has been clarified yesterday—clarified in a way that I thought, as I think your Honor thought, was a departure from any expression of

their previous opinion, and that is, that the Government now makes the contention or makes the concession, rather, that the contracts are perfectly legal unless their effect is a violation of the Statute.

Now, the Government's theory as announced by Mr. Dixon is that competition is shut away from the 5,000 outlets with which Standard has contracts. These outlets, say the Government, are a substantial market from which competitors are barred. From this Mr. Dixon concludes that there has been an unreasonable restraint under the Sherman Act and a substantial lessening of competition or tendency to create monopoly under the Clayton Act.

Mr. Dixon says that we may not go beyond this and see what the competitive situation was in fact. It is enough, says Mr. Dixon, that the outlets were substantial in number and that Standard marketed a large volume of products through those outlets. He mentions the figure $67,000,000, and it will appear that that figure represents 80 per cent gasoline.

Mr. Dixon says that we should not be permitted to inquire as to the total outlets in the area beyond what sells the products of Standard; that we should not be permitted [fol. 2076] to inquire as to the number of competitors in the area; that we should not be permitted to inquire as to the volume sold by competitors in the area; and that we should not be permitted to inquire whether competitors compete in the area by means of the very practices which, in the case of Standard, are condemned: All that area is blank, says Mr. Dixon. We may not trespass upon that area. We must look simply at the stations that sell Standard products.

This theory, I submit to your Honor, is a misinterpretation of the Act of Congress and a misinterpretation of the meaning given the Act of Congress by the courts.

If this theory is correct, that is, that Standard has monopolized 5,000 outlets, then why didn't they bring suit under the monopoly section of the Sherman Act?

If this theory is correct, why the introduction of volumes of testimony during the first three weeks of the trial?

Let us examine this theory now and consider, first, Section 1 of the Sherman Act. The case cited here, the Sherman Act case which counsel relies primarily upon, is the Yellow Cab case. Counsel himself very frankly says that

this case is a departure from prior cases. I do not emphasize that, but I want to consider the Yellow Cab case and to point out the very marked distinction between that case and the case at bar.

In the Yellow Cab case, a Michigan corporation manufac- [fol. 2077] turing taxicabs, having stock ownership in cab-operating companies in Chicago, conspired with such cab-operating companies to the end that they would buy all their cabs from the Michigan corporation. It was shown conclusively—now, your Honor, and I want to emphasize this particularly—it was shown conclusively that the Chicago cab companies had a monopoly in Chicago because they held substantially all of the available cab licenses and the Chicago situation did not permit other licenses to be issued to other cab companies.

The case went up on the pleadings; there was no trial in the case; and in the pleadings that monopoly situation in Chicago is gone into with the utmost particularity. The result was that any cab manufacturer who wanted to sell cabs in Chicago was shut out by the conspiracy, for the conspiracy gave the Michigan corporation the exclusive right to sell cabs to the only cab purchaser in the entire Chicago area.

Now, I have said that this case went up on the pleadings. The court says in that case, and I quote very briefly:

"* * * The theory of the complaint,"——

And that is all the court had to go on was the complaint——

> "The theory of the complaint, to borrow language from *United States* v. *Reading Co.*, 253 U. S. 26, 57, is that 'dominating power' over the cab operating companies 'was not obtained by normal expansion to meet [fol. 2078] the demands of a business growing as a result of superior and enterprising management, but deliberate, calculated purchase for control.
>
> "If that theory is borne out in this case by the evidence, coupled with proof of an undue restraint of interstate trade, a plain violation of the Act has occurred."

There is the meat of the Yellow Cab case—a complete monopoly in the Chicago area and preempting of that large

area of the only purchaser for taxicabs. No other purchaser could have stepped into that area.

In our case, your Honor, it is not shown that the dealers to whom Standard sells its products have or can have anything approaching a virtual monopoly of the retail gasoline business in the seven western states.

[fol. 2079] They never could have since the potential outlets for the products involved in this case are practically unlimited.

We have in evidence an exhibit which indicates activity in the Long Beach area in July, 1947. Forty gasoline stations were under construction in that area, and not one of those stations were being constructed by Standard Oil Company of California.

If Section 1 of the Sherman Act is what the government is relying upon, clearly the Yellow Cab case is no basis for granting the government the relief it prays for.

Now, let's consider section 3 of the Clayton Act. Thereunder contracts are condemned only when their effect may be to substantially lessen competition or tend to create a monopoly in any line of commerce. Counsel tries to apply language in the Yellow Cab decision to interpret the Clayton Act's language "to substantially lessen competition." Particularly, counsel points to the language in the Yellow Cab decision, reading as follows, and I quote:

> "It is enough if some appreciable part of interstate commerce is the subject of monopoly."

Now, the reason for the use of that language in the Yellow Cab decision is perfectly clear from reading the opinion. The court in the Yellow Cab decision said:

> "It follows that the complaint in this case is not defective for failure to allege that CCM has a monopoly [fol. 2080] with reference to the total number of taxicabs manufactured and sold in the United States."

There was the contention of counsel in the Yellow Cab case. They said to the government, "You must show a restraint extending over the entire taxicab buying business in the United States." And, naturally, the court said to the government, "You don't have to do that. You have shown a monopoly in the Chicago area. You have shown that this conspiracy preempted the only purchases in the

Chicago area. There was nobody else in the Chicago area to which a competing manufacturer of taxicabs could have sold taxicabs, and when you have done that," says the court, "you have done enough, and all you have to do is to bring it into interstate commerce, and if it had an appreciable effect, that Chicago monopoly, if it had an appreciable effect upon interstate commerce, that is all you need to show."

Now, that is the language, nevertheless, which counsel tries to take out of that Sherman Act decision and apply to the vital language of the Clayton Act, which must govern a determination in this case,—substantially lessens competition.

This appreciable part of interstate commerce referred to in the Yellow Cab decision is a concept that has no relation whatever to our case. In the Yellow Cab case you [fol. 2081] started with a monopoly. If the monopoly appreciably affected interstate commerce, it came within the Act. In our case you do not start with a monopoly. The government had the burden of proving a monopoly, and the government can't raise itself by its bootstraps to accomplish that proof by applying this "appreciable part of interstate commerce" theory to the language of the Clayton Act which calls for a substantial lessening of competition.

But now let us look again at the language of section 3 of the Clayton Act.

The Court: Let me ask you this: Do I gather from your argument that you feel that a greater proof is necessary under the Clayton Act than would be necessary under the Sherman Act?

Mr. Hall: I am saying that this language of the Yellow Cab case, "an appreciable part of interstate commerce,"—that particular concept in that case cannot be applied in determining what is meant by the language "a substantial lessening of competition" in the Clayton Act.

The Court: Granting that the language was used in conjunction with the Sherman Act, the historical fact remains that the Clayton Act was aimed at practices which could not be reached under the Sherman Act, because under the Sherman Act the task of reasonableness required an actual resulting restraint, but under the Clayton Act contracts [fol. 2082] which had a tendency to achieve that result, that is, a contract resulting in the lessening of competition

is covered, and the Supreme Court in the late cases has departed from the interpretation which governed in the past, and interpreted the word "may" to mean "probable" or "probability," such as the cases you cite in the brief to mean "possibility," a fact which has led the dissenting justices in the Morton Salt case to insist that they had repudiated the prior concept.

In other words, the point I am trying to grasp is this. To me it seems that less proof is required under the Clayton Act than is required under the Sherman Act; and here the charge is violation of both.

Mr. Hall: Yes. My argument was a little narrower than that, your Honor. I was protesting against the application of this language in the Yellow Cab case, namely, "appreciable part of interstate commerce" to an interpretation of what is meant by "substantially lessening competition or tending to create a monopoly," as used in the Clayton Act.

I think an answer to your Honor's remarks or that argument addressed to your Honor's remarks will come a little bit later, because I agree with your Honor that as far as the broad standard of legality is concerned, the test under the Sherman Act may well be the test under the Clayton Act, except that the Clayton Act, as your Honor points out, [fol. 2083] was intended to reach practices in their incipiency.

The Court: That is right. In other words, my thought from reading the cases, and I have read and reread them since we have been trying this case, is this, that anything which in the end could be said to be an unreasonable restraint would be a practice which, in its beginning, would tend to a monopoly or substantial restraint. In other words, what would in its effect be punishable or be prohibited under the Sherman Act would, in its beginning, be prohibited under the Clayton Act, provided its effect is, let us say probable or possible, whatever term you choose.

Mr. Hall: I think that would be true, your Honor.

The Court: All right.

Mr. Hall: Now, I have discussed, if I may recapitulate, section 1 of the Sherman Act and the Yellow Cab case.

Then let us look again at the language of section 3 of the Clayton Act. It does not say that the contracts were illegal if their effect was to shut competitors out of a substantial market. It says, rather, that the contracts were illegal if

their effect was to substantially lessen competition or tend to create a monopoly in any line of commerce. Some effect must be given, your Honor, to the language "substantially lessen competition." Some effect must be given to the language "in any line of commerce."

If Congress had intended to enact a law which would [fol. 2084] have forbidden contracts which had the effect of shutting competition out of a market, it would have said so. Instead it forbade contracts which have the effect of substantially lessening competition or tending to create a monopoly in any line of commerce.

The government here has merely shown Standard's volume and the number of Standard's outlets. How can the government from this limited showing properly argue that there has been a substantial lessening of competition or a monopoly in any line of commerce?

During the trial your Honor remarked that this language "any line of commerce" is a broad and not a narrow term. We agree, and we have tried to develop our proof on that basis.

To determine whether there has been substantial lessening of competition in any line of commerce, it would seem that one should take a look at the overall competitive picture, that is, the line of commerce. To determine whether there is a tendency to create a monopoly in any line of commerce, it would seem that one should take a look at the competitive situation in the area said to be monopolized, that is, the line of commerce.

Now, the government says that the thing monopolized was not a line of commerce, but Standard's own dealer stations. Nothing else. Is that a line of commerce?

[fol. 2085] No case can be found where the contracts are perfectly legal, irrespective of their effect, and where the Act is held to have been violated simply on a showing that the contracts were with a large number of outlets handling a large volume.

The major fallacy of the government's case lies in the contention that competitors were shut out of a market because they couldn't sell merchandise to certain service stations. But that is not an exclusion from a market.

I want your Honor to note the absurdity that this contention leads to. I think your Honor may have had it in mind yesterday afternoon when the contention was made.

Suppose that Standard, or some other company, instead of contracting with dealers to buy their requirements, had contracted with 4,000 dealers to sell each dealer 2,000 gallons of gasoline a month over a period of one year. Would the government say that was unlawful? If they say that that is unlawful, then the commerce and industry of the country is at a standstill. No contention the government could make would be more disrupting to our system of free enterprise.

As a matter of fact, the contracts in the illustration I put would be perfectly legal. Yet in the case I have supposed, Standard's competitors would be shut out, to use the government's parlance, from a market embracing 96,000,000 [fol. 2086] gallons of gasoline. And I challenge the government to point out the line of demarcation between the case I have supposed, and the case at bar. And if they say that in the case that I have supposed, where each dealer was required by his contract to buy 2,000 gallons a month, that the dealer was also permitted to buy any excess amount that he might need from somebody else and that that relieves the situation, then my question to the government is this: Isn't it a fact that with respect to the 2,000 gallons a month, there has been a shutting out of competition, a shutting out amounting in one year's time to 96,000,000 gallons of gasoline?

That is the absurdity that the contention of the government leads to inevitably. That is the kind of precedent the government would like to have in this case.

Each one of the dealers that I refer to in my hypothetical case, having bought 2,000 gallons a month from Standard, had satisfied his requirements to the extent of 2,000 gallons per month, and nobody else in the world could sell him the gasoline to take the place of that 2,000 gallons.

What kind of a precedent is it that the government is seeking in this case? No case that they have cited, or no case that they can cite will show any parallel to what they contend for in this case.

Let us look for a moment at the Boro-Hall case. That is a case, your Honor, that is cited on page 14 of our brief.

[fol. 2087] The Court: Yes, I have it in mind.

Mr. Hall: It was a case——

The Court: I am familiar with it. I cited it myself in one of my opinions.

Mr. Hall: Then if your Honor is familiar with it, you will see how that decision would have been impossible under the government's contention.

Take the Pictorial Review case cited at page 63 of our brief. There is another case where the Pictorial Review, to use the government's parlance, was shut away from probably thousands of prospective purchasers. That case could not have been decided in that way under the government's contention.

The Pearsall case, which I called attention to in argument today, and which your Honor cited in his San Francisco opinion, could not have been decided the same way if the government's contention is the law of the land.

Under Section 3 of the Clayton Act the government cites the International Salt case, and I am not going to spend very much time on that case, because I have already referred to it in argument during the course of the trial. But I will just read again the language which is the heart of that case:

> "The appellant's patents confer a limited monopoly of the invention they reward. From them the appel- [fol. 2088] lant derives a right to restrain others from making, vending or using the patented machines. But the patents confer no right to restrain use of, or trade in, unpatented salt. By contracting to close this market for salt against competition, International has engaged in a restraint of trade for which its patents afford no immunity from the antitrust laws."

The patent confers a limited monopoly. The limitation of that monopoly may not be extended by a tie-in agreement. That is the International Salt case.

In the recent Morton Salt case the Commission had found that the Salt Company had discriminated in price between different purchasers of like grades and qualities of salt, in violation of Section 2 of the Clayton Act. Reversing an order of the Circuit Court of Appeals, setting aside the Commission's order, the Supreme Court held that the burden was on the company to show that the company's discount differentials were justified by cost savings under the Act, and the court found that such justification had not been made.

The contracts, therefore, in the Morton Salt case under the proof became illegal at once, when that justification was not made, because they forced one purchaser to pay more for his product than another purchaser, in violation of sec-
[fol. 2089] tion 2 of the Clayton Act. Thus, the contracts under the proof in that case were illegal.

In our case the contracts are not illegal unless they unreasonably restrain interstate commerce, or unless their effect was to substantially lessen competition or tend to create a monopoly. And that is the very fact at issue here, and it is a question of fact.

[fol. 2090] In the Morton Salt case the court says in its opinion—I just want to read one sentence which I think is significant:

> "That respondent's quantity discounts did result in price differentials between competing purchasers sufficient to influence their resale price of salt was shown by the evidence."

No such attack upon the legality of the contracts at bar is possible. Under counsel's own theory the contracts of the case at bar become illegal only if their effect was to restrain or substantially lessen competition.

If counsel's theory is correct, how could it have been possible to reach the result that was reached in the Bausch & Lomb case, reported at 58, page 58 of our printed brief? There was a case that went up to the Supreme Court and was affirmed by a divided court. I believe Mr. Justice Jackson took no part in the decision. It is probable that it was decided when he was abroad. So it was affirmed by an equally divided court.

But in that case let us see what the facts were. Briefly, a manufacturer of lenses made a contract with Soft-Lite Lens Co., by which Bausch & Lomb agreed to manufacture all the pink tinted lenses required by Soft-Lite in its wholesale distribution of lenses and not to manufacture such lenses for anyone else and not to compete with Soft-Lite in the sale of such lenses. Those lenses were distributed
[fol. 2091] through between 7,000 and 8,000 retail dealers in the United States. There is volume for you. There is a shutting out for you. And if counsel's theory is correct, the decision in the Bausch & Lomb case would have been impossible.

I have said, your Honor, that I think the test, the overall test of illegality, is much the same under the Sherman Act as it is under the Clayton Act with the exception that, as your Honor points out, under the Clayton Act the situation may, as the courts say, be reached in its incipiency. I have said as much in the printed brief we filed with your Honor. There I have quoted the International Shoe Co. case reported in 280 U. S., 291. There the court said:

> "In *Standard Oil Co.* v. *Federal Trade Commission*, 282 Fed. 81, 87, the Court of Appeals for the Third Circuit applied the test to the Clayton Act which had theretofore been held applicable to the Sherman Act, namely, that the standard of legality was the absence or presence of prejudice to the public interest by unduly restricting competition or unduly obstructing the due course of trade. * * *
>
> "'The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain.'"

There is one assumption that seems to have been indulged in this case that I would like to address myself to for a [fol. 2092] moment, and I don't know that the point has been mentioned before. We seem to have been assuming all along that these contracts that are here involved, these so-called requirements contracts, come within Section 3 of the Clayton Act.

Section 3 of the Clayton Act provides that it shall be unlawful to sell or contract to sell on the condition, agreement, or understanding that the purchaser shall not use or deal in the goods, wares, merchandise of a competitor where they effect, etc.

Now, looking just at that language, do our contracts come within the Act?

We submit they do not. This language does not say and does not mean that a contract is unlawful where it is upon condition that the buyer will not deal in the goods of a competitor at a given spot. The prohibition is a prohibition against the contract where it is upon the condition that the buyer will not deal anywhere or at all in the goods of a competitor.

The prohibition of Section 3 of the Clayton Act is against

a condition which forbids any dealing in the goods of a competitor in any event at all, not simply a condition which forbids a dealing in the goods of a competitor to a limited degree.

How else can you reconcile the Sinclair case referred to [fol. 2093] at page 65 of our printed brief, or the Pick case which your Honor has heretofore referred to?

Both these cases held there was no violation of law, yet in the Sinclair case the condition was that no competitor's gasoline should be sold through Sinclair pumps; and in the Pick case the condition was that no competitor's automobile parts should be used in the repair of Chevrolet cars.

If the thing forbidden by Section 3 of the Clayton Act is a condition that a competitor's goods shall not be dealt in at one place, although they may be dealt in at another place, then the Sinclair and the Pick cases were wrongly decided. To make this specific, the Sinclair case upheld a condition which forbade the sale of a competitor's gasoline at a given pump, the buyer being free to handle a competitor's gasoline elsewhere.

How, then, can a condition be unlawful which forbids a sale of a competitor's gasoline at a given station, the buyer being free to handle a competitor's gasoline across the street or next door or anywhere he pleases?

If Section 3 does not forbid the one, how can it be said to forbid the other?

And is counsel making a distinction between a service station property and a pump block? Clearly, the language of Section 3 does not make unlawful anything less than a condition which forbids the buyer from dealing in a com- [fol. 2094] petitor's goods anywhere or at all. Clearly, any other interpretation of the language of Section 3 would extend its prohibitions to absurdity.

As I have already pointed out, any contract for the sale of goods lessens competition to the extent that such a contract satisfies the buyer's wants. To that effect I have cited, I think, three cases at page 54 and subsequent pages in our printed brief.

Therefore, if the language of Section 3 is to be distorted so as to render invalid every contract which is conditional upon the understanding that the buyer will not in a certain instance or at a certain place or for a certain purpose buy

the goods of a competitor, it renders invalid an appalling number of commercial and industrial contracts.

Section 3 must be taken to mean what it says—to forbid only contracts conditional upon the buyer not buying from the competitor at any time or at any place during the life of the contract.

Now, that is not what our contracts do; it is not what our sublease does. Our contracts are all limited to the requirements at a given place of business, and the same is true of the sublease.

Thus, I think, your Honor, we must discard counsel's theory and turn to the effects of the contracts, not the narrow effect on 5,000 dealer outlets, but the effect in the area [fol. 2095] selected by the Government when they brought this suit, the seven western states. And the question then is: Did the contracts unreasonably restrain commerce or have the effect of substantially lessening competition or tending to create a monopoly in the petroleum products and the tires, tubes, and batteries dealt in in the commerce in that area?

Would your Honor consider a recess at this time?

(Short recess.)

The Court: Mr. Hall, before you proceed, I want to ask a question. I took these exhibits along with me and I got my notes all mixed up. I was not able to find what I wanted. I have found it now. I want to make just one observation to help clarify my own thoughts.

In this opinion in the Yellow Cab case, on page 226, the court used this language:

> "Nor can it be doubted that combinations and conspiracies of the type alleged in this case fall within the ban of the Sherman Act. By excluding"——

This is the significant language.

> "By excluding all cab manufacturers other than CCM from that part of the market represented by the cab operating companies under their control, the appellees effectively limit the outlets through which cabs may be sold in interstate commerce. Limitations of that nature have been condemned time and again as violative [fol. 2096] of the Act. *Associated Press* v. *United States*, 326 U. S. 1-18-19, and cases cited."

The reference to that decision is very significant to me in that, as I read it, I think the nucleus of the embryo of the decision in the Yellow Cab case is in the Associated Press case, and that case has a greater significance to me than the Yellow Cab case because in the Associated Press they were dealing with the effect of the individual contract, which, as you and I probably know better than the average legal person, because of our former association with newspapers, it made the Associated Press the sole owner of any local news gathered by the members.

So that the court there had as a factual basis, based on testimony, the proposition whether such individual restriction is, regardless of geography, just a limited outlet, within the scope of the prohibitions of the Sherman Act. And this is the language they used, and with that, I will yield to you, because my study of these cases since yesterday raises this interesting question as to whether the Government may not be correct, that we are confronted here with a deviation from the concept or from the criterion which the court established in the Pick and other cases. And this is what the court says, beginning at the bottom of page 18 of 326 U. S.:

> [fol. 2097] "The restraints on trade in news here were no less than those held to fall within the bars of the Sherman Act with reference to combinations to restrain trade outlets in the sale of tiles,"——

I am not going to cite cases. Citing *Montague and Co.* v. *Lowry;* or enameled ironware; or lumber; or women's clothes; or motion pictures.

> "Here as in the Fashion Originators' Guild case, supra, 465, 'the combination is in reality an extra-governmental agency, which prescribes rules for the regulation and restraint of interstate commerce, and provides extra-judicial tribunals for determination and punishment of violation, and thus "trenches upon the power of the national legislature and violates the statute" * * *.' By the restrictive By Laws each of the publishers in the combination has, in effect, 'surrendered himself completely to the control of the association,'"——

Those words are in quotations and they are a quotation from *Anderson v. Ship Owners Assn.*, 272 U. S. 359, 362. Continuing:

> "in respect to the disposition of news in interstate commerce. Therefore this contractual restraint of interstate trade, 'designed in the interest of preventing competition' cannot be one of the 'normal and usual agreements in aid of trade and commerce which may [fol. 2098] be found not to be within the Act. * * * *'"

Again a quotation, quoting *Eastern States Lumber Dealers' Assn.* v. *United States*, which, as far as I remember, is not cited by you in your brief. I do not know whether it is cited by the Government in the Government's brief.

Mr. Dixon: I think so, your Honor.

The Court: Which is a case that comes up repeatedly in the late cases.

So the question I am asking you is this: If you read the Yellow Cab case and the Associated Press case, are you not confronted there with the proposition that whether the court is dealing with a factual situation, admitted by the pleadings, which show exclusions from certain outlets, or whether the court is dealing with a factual situation developed at the trial in which findings were made by a lower court, it attempts to say that an agreement which closes a particular outlet to a supplier, if multiplied in sufficient numbers to come within the rule of substantiality or to affect an appreciable segment of the commerce within a particular area is unreasonable restraint under the Sherman Act?

And isn't this conclusion also evidenced from the last sentence used on the page, where the court said:

> "It is further said that we reach our conclusion by application of the 'public utility' concept to the newspaper business. This is not correct. We merely hold [fol. 2099] that arrangements or combinations designed to stifle competition cannot be immunized by adopting a membership device accomplishing that purpose."

I assume the reference to a public utility is the reference to the dissents by Mr. Justice Roberts and Mr. Justice Murphy.

Mr. Hall: All right. Now, your Honor, I think that is a very pointed question. It ought to be answered very specifically.

In this Yellow Cab case, to adopt the parlance of the Government, it was a shutting out. See what the shutting out was, what the purchasers were who were preempted, let us say. They were the only purchasers in the entire Chicago area, the only possible purchasers in the entire Chicago area because of this license situation.

Let us look at the Associated Press case. There a newspaper trying to bring into a city and get this valuable service was barred. The franchises, as I recall, were exclusive for a city.

The Court: 50-mile radius.

Mr. Hall: Yes. There was a large area preempted and competition was barred.

Now, see what the Government wants to do in this case. [fol. 2100] The Court: Isn't that merely a question of degree? I warn you again I am asking pointed questions of you, just as I did yesterday of Mr. Dixon, to clarify my own thoughts. But doesn't your answer relate to a question of degree, ultimately, rather than——

Mr. Hall: No. I think it has to do with the element that is at the basis of all of this anti-trust legislation, and that is the preservation of competition.

Now, take our situation as illustrated by that Los Angeles survey. The figures show in the exhibit before your Honor that for every one Chevron station in the Los Angeles area there are 25 competitors. And there is no shutting out as there was in the cab case and in the Associated Press case, because in the cab case the municipal regulations limiting those licenses were such that you could not have any additional buyer spring up. In the Associated Press case you could not have an additional buyer spring up. But in our case the field for additional buyers is practically unlimited, as shown by our Long Beach survey, for example. Let me go one step further. Where are you going to draw the line, your Honor, without reaching an absurdity, if you adopt the Government's theory? Every contract restrains competition to a certain degree.

The Court: That is true.

Mr. Hall: I won't go into that argument, but that is the

[fol. 2101] refutation in the final analysis of the Government's theory.

The Court: Well, but does not the Salt case, the Morton Salt case, postulate a situation where, in a quantitative basis, the effect upon a substantial outlet in that case, as Judge Rifkin's opinion shows 900 outlets and it did not aggregate $500,000, was considered both unreasonable and lessening of substantial competition, despite the fact that the buyer merely had the limit, and it was admitted and appears from the record that other competitors were in the same field. This is the language I refer to in Judge Rifkin's opinion, 6 F.R.D. 302.

> "In the light of these general principles the problem presented by the instant case must be decided. The defendant here urges the impropriety of summary judgment because of the presence of two triable issues, namely, (1) whether the Lixator and Saltomat leases do in fact substantially lessen competition or tend to create a monopoly in salt, and (2) whether the restraint of trade affected by these leases, if any, is an unreasonable restraint.
>
> "This contention is confronted by two possible answers. The first is that the conduct complained of is unlawful per se. (Citing Fashion Originators' Guild case.)
>
> [fol. 2102] "The other is that a restraint which affects 900 business units in a business aggregating $500,000 per annum is, without more, undue and unreasonable, and the lessening of competition, on its face, substantial."

[fol. 2103] Mr. Hall: Now, apply the reasonable concept to that decision, which I have tried to apply to the other two cases your Honor has cited. In that case you start with a patent monopoly. That patent monopoly excluded from the field all of the competitors by virtue of the patent. Nobody else could sell the machines put out by the Salt Company except the Salt Company. That created a complete monopoly, just as complete a monopoly as in the Yellow Cab case. That is with respect to the machines, and when you add to that monopoly a tie-in clause, tying in an unpatented material, you enlarge the scope of the monopoly. So that the matter of the substance does not play very much

figure. You can come under Section 3 of the Clayton Act, which says where they tend to create a monopoly, and you can stop right there, and you do not need to talk about substantial lessening of competition because you have a monopoly, and whether there were 700 or 7,000 units does not make any difference whatever.

The Court: I want to interrupt you there. I want to get before you the first impression I got from a study of these cases and the references made, so that you will have an opportunity to present your views.

Mr. Hall: I want your Honor to do that.

The Court: That is why I have always said I prefer oral argument. I can't ask questions of a brief, but I can ask [fol. 2104] questions of the man who might write one. So with that interruption, you may continue with your argument, and if anything else occurs to me, I will state it. That is the only thing that occurred to me there. I might say that I stayed very late last night and did a lot of spade work for myself in going over some of the exhibits, and making notes, and checking some of the cases again.

Mr. Hall: I hope your Honor will also in your deliberations give thought to what I call the absurdity of the logical conclusion in the government's argument. If this theory of the government becomes a precedent, why, I don't know how many contracts all over the country it will affect,—definite supply contracts, your Honor.

The Court: I stand by what I said yesterday in the record, and that is if we were dealing with a single or even a multiple outlet situation, which is limited in scope, such as I illustrated by speaking of Sears, Roebuck & Company and Montgomery Ward, it would be carrying an argument to absurdity to contend that such an arrangement, limited in scope, would constitute a monopoly within it.

Mr. Dixon, in answer to that, practically conceded the proposition and said that the restraint of this character is only illegal if it affects a large number of outlets within an area and a large value in dollars of the business thereby controlled. I think I am stating correctly your position. [fol. 2105] Mr. Dixon: That is correct, your Honor.

The Court: I have not seen a transcript of your argument, but it is very clear in my mind, because I have been making notes all the time.

Certainly, gentlemen, I think you know me well enough

to know that I have developed, as every judge must develop, the ability to jot down notes while I listen, so that if my head is lowered, do not think that I am not paying attention to what you are saying, because all of us have to do that. We can make notes and at the same time be fully aware of what you are saying, because the notes relate to what you say.

Mr. Hall: Yes, your Honor.

The Court: Sometimes I notice, not you, but I was hearing a matter the other day and I just dropped my head; and counsel stopped because he wanted to be sure I was hearing what he was saying. I said, "I am listening to you. My ears are not hidden. My face may be directed to the paper which I am examining at the particular time, but I can hear you."

Mr. Hall: I also want to call attention to this situation: Suppose you have just one contract. Suppose you have a big corporation that is buying one item of its raw materials, and it makes a contract for a year for the delivery of large quantities of that material over the period of the [fol. 2106] year, and suppose that that material over a year amounts to $10,000,000. We have lots of contracts like that all over the country.

The Court: I think that has a different element. Let us assume, or, let us go back to the newspaper business, and this is a matter which you are all aware of. We know that there have been recent shortages in print paper and we know that while newspapers that have large resources and who had contracts over long periods of years, they have suffered from the shortage. We know that some of them have gone so far, as one of our local newspapers did, as buying an interest in a lumber mill so that they could have control over the pulp from which the paper is made.

Now, suppose that the "Los Angeles Times" has an agreement with a paper mill which it does not control, providing that they will buy within a certain period, not their requirements, but a specific amount which, in effect, would supply their needs.

Mr. Hall: Yes.

The Court: There we have an agreement which only indirectly would exclude others, regardless of conditions.

Mr. Hall: Pardon me a moment there, your Honor.

The Court: Yes.

Mr. Hall: In that very case, your Honor, the "Times," is not going to buy a single pound of newsprint from another seller?

[fol. 2107] The Court: That is right. I am conceding that and I am postulating this point. You must bear in mind, however, that when I refer to a point like the one I made a minute ago, it was deliberately prepared in advance, but when I give you an illustration of this kind, I am thinking out loud and I am trying, within the limits of the situation, to state a case that embodies your argument within it, taking advantage of the situation and not eliminating any element. I am assuming that the result of this is to shut the market tight, and that Mr. Norman Chandler or the manager of the newspaper absolutely cannot be in the market for any paper from any other source, because under no circumstance will he need more.

Mr. Hall: Yes.

The Court: That is a fair proposition.

Mr. Hall: A very fair proposition.

The Court: All right. Now, there you have what the old cases call an indirect effect on commerce, although writers and the Court itself has lately sought to get away from those terms, "direct" and "indirect," so far as their effect on commerce are concerned, and substitute other criteria.

Now, isn't there a difference between that and a situation where you do not buy in advance all you possibly need, and [fol. 2108] a situation like this, where, without fixing a definite amount, you give the supplier carte blanche and they say, "I agree to take all my requirements, and none others."

Isn't the second situation, where you agree to take all the requirements, a complete shut-out which leaves no possibility whatever of a supply from another source, while in the first situation, using the newspaper-print supply and using the "Los Angeles Times" as our guinea pig, there is a possibility that the source of supply through some reason might prove inadequate and the newspaper might buy either to supplement its supply or to lay in stock for future use,—a situation which actually developed in this case when, as we found, the supervising employees of Standard shut their eyes as to the fact that during the shortage tires,

tubes and batteries from other sources were being sold through these exclusive outlets.

I don't know whether I have made myself clear. I have tried to indicate, or, rather, to question whether there isn't, I should say, a possibility in one case and a finality in the second, which excludes all possibility of trading with the particular individual?

Mr. Hall: I don't think there is any logical difference, your Honor, between the two situations. What Congress had in mind under the Clayton Act was a contract which substantially lessened competition or tended to create a mo-
[fol. 2109] nopoly, and unless the contract had that effect, then the contract was perfectly legal, whether it was a complete requirements contract, or whether it was a definite quantity contract.

Now, in citing the large type of definite quantity contracts that I did, I had in mind counsel's argument on that second part of the statute, the argument relating to the language of the statute "substantial quantity." And I say, adopting the parlance of counsel with reference to shutting out of the market, that with one contract and one buyer you may have an awful large quantity of goods shut out of the market.

The Court: The cases, not so much the antitrust cases, but the cases dealing with the other regulations of commerce, especially dealing with State regulations insofar as they affect the commerce clause, have evolved the concept that the effect there is indirect, while the other one is direct; and whether it is a theoretically correct distinction, it has been applied in many instances, and the courts have allowed restrictions where the effect be indirect and disallowed those where the effect is direct.

Mr. Hall: But I submit, your Honor, there the court was talking about the effect upon commerce, and not about the legality or non-legality of the thing which was said to affect commerce. That language "direct" and "indirect" has to do with the repercussions of the practice upon commerce.

[fol. 2110] The Court: But under the Sherman Act the effect, being an ingredient of the violation of the statute, we may consider in determining reasonableness or unreasonableness of the restraint, whether the consequence of an act is direct or indirect. Ultimately, the Supreme Court

has said that they have not tried to lay down a definite rule under the Sherman Act as to what is or what is not unreasonable. To use a French expression, they practically say, "C'est selon,"—it is as the situation presents itself. And even before the Standard case, in the Dr. Pierce case, also decided in 1911, which as you remember was a suit between two pharmaceutical companies over a restriction of outlets or sale—I think Parke-Davis or Parke & Company were the defendants, and I don't have the case before me,—and that was even before the Standard case and they laid down the rule of reasonableness there, although it was in the same year, in determining whether a certain arrangement was or was not in violation of the Act.

I think I have it somewhere here. Yes, it is *Dr. Miles Med. Co. v. Parke & Sons*, and it is in 220 U. S. 73. It is a long opinion and the paragraph to which I refer is on page 406.

Go ahead with your argument.

Mr. Hall: Now, we come to the next inquiry, and that is the effect of the contract. We submit that the effect of [fol. 2111] these contracts was not to substantially lessen competition or to tend to create a monopoly or to unreasonably restrain interstate commerce.

Now, that is a necessary inquiry because that is a necessary part of the statute, of both statutes. That, as your Honor has indicated, is a question of fact, and in the Carter Carburetor case in 112 Fed. (2d) it is said to be a question of fact for the court. I hope that in connection with that Carter Carburetor case your Honor will not overlook the footnote on pages 70 and 71 of my brief.

The Court: No, I haven't. I have your brief so marked up you wouldn't recognize it if you looked at it. I have been working on it. I began on that even long before the case began.

Now, which page are you talking about?

Mr. Hall: Page 70 and 71.

The Court: All right.

Mr. Hall: Now, I come to this question of whether the government must show a probability that the contracts substantially lessen competition or tend to create a monopoly, or whether a mere possibility is enough. And I do not understand that the Morton Salt case changes the prior law

which said that there must be a probability and not a mere possibility.

The Court: Well, the dissenting justices feel so.

[fol. 2112] Mr. Hall: The dissenting justices feel so, but with all deference to the dissenting justices, I would like to tell you the reason for my feeling, your Honor. The court says in that case:

> "* * * After a careful consideration of this provision of the Robinson-Patman Act, we have said that 'the statute does not require that the discriminations must in fact have harmed competition, but only that there is a reasonable possibility that they "may" have such an effect.'"

It cites then the Corn Products Co. case. Then it says this in a footnote:

> "This language"—the language I have just quoted—"is to be read also in the light of the following statement in the same case"—that is the Corn Products case—"discussing the meaning of section 2(a), as contained in the Robinson-Patman Act, in relation to Section 3 of the Clayton Act;"—

Then it quotes this language:

> "'It is to be observed that section 2(a) does not require a finding that the discriminations in price have in fact had an adverse effect on competition. The statute is designed to reach such discriminations "'in their incipiency,'" before the harm to competition is [fol. 2113] effected. It is enough that they "may" have the prescribed effect.'"

Citing the Standard Fashion Co. case:

> "'But as was held in the Standard Fashion case, supra, with respect to the like provisions of section 3 of the Clayton Act, prohibiting tying clause agreements, the effect of which "may be to substantially lessen competition," the use of the word "may" was not to prohibit discriminations having "the mere possibility" of these consequences, but to reach those which would probably have the defined effect on competition.'"

[fol. 2114] So, I take it, that that footnote at least reaffirms the previous rule of probability and not the rule of possibility with respect to Section 3 of the Clayton Act. But whether that be true or whether it be not true, we at least have this in the case at bar, and that is that we don't have to now sit down and take contracts which have not been tried out, which have not been in force, and speculate as to what their effect is going to be in the future, because we have in this case contracts that have been in use for a long, long time, and we can tell by experience what their effect is. We don't have to sit down at the outset and speculate about their possible effect or probable effect.

Now, next, let us consider the facts disclosed by the evidence to see whether plaintiff has satisfied this burden of proof. The burden of proof, as indicated in our brief, is that the plaintiff must show a definite showing of illegality. The language of the Supreme Court is "a definite factual showing of illegality." I said a moment ago that the contracts had been tried out; been in practice for a number of years. The testimony shows that prior to the year 1938 Standard had what, in general, is referred to as the agency, or, the lease and agency scheme. Then in 1938 these dealer agreements came into vogue with the company. In 1938 there were dealer agreements and there were authorized distributor agreements. Those authorized distributor agree-
[fol. 2115] ments had gone back to 1934. Now, in 1944 those authorized distributor agreements were superseded by the dealer agreement TBA. That is conclusively shown by Government's Exhibit 6. So that after 1938 we have the dealer agreements—or, let me put it this way: between 1938 and 1944 we have the authorized distributor agreements and the dealer agreements. After 1944 we have the dealer agreements, and the dealer agreements TBA and the petroleum products and equipment agreements, the latter having come into the picture in 1944.

Now, a word as to the practice, as shown by the evidence, under those agreements and without agreements. It is shown by the evidence that Standard will sell gasoline to a dealer without any contract whatever, even though that dealer handles competitive oils, competitive greases, competitive tires, tubes and batteries, and that that practice has been going on for many years.

It is shown also by the evidence that without a contract

Standard will sell to a dealer its lubricating oil, even though that dealer handles a competitive brand of gasoline, or competitive tires, tubes and batteries, and that that practice has been going on for many years. Now, a dealer has his choice of a form of contract here. If a dealer wants to handle competitive tires, tubes and batteries, he can take a dealer agreement with Standard Oil Company, and he is [fol. 2116] then free to handle competitive tires, tubes and batteries; or, if he wants to handle the Atlas products or the accessories that Standard sells he can take a dealer agreement TBA. But he doesn't have to take a dealer agreement TBA. It is up to the dealer.

Let me mention in passing, and let me call your Honor's attention in passing to this fact, that those dealer agreements and those dealer agreements TBA are terminable—terminable by the dealer at the end of any six months period on 30 days notice.

The testimony shows that 25 per cent of Standard's outlets handle competitive lube oils, and the schedule which is Exhibit FFF, introduced in evidence yesterday, shows the competitive products handled by Chevron dealers who have a TBA agreement.

Now, I said a few minutes ago that these contracts are nothing new, and that they have been in force for a long period of time and used for a long period of time, so that we can determine what the effect of the contract is.

Now, your Honor, I am coming right back to that language of Section 3, the effect of contracts in actual practice. I am going to talk a little more about effect, but here is one effect illustrated by Defendants' Exhibit HH. It is a summary of other schedules, other schedules depicting graphs, which were put in evidence at the time Mr. Dern was on the stand.

[fol. 2117] Now, the gasoline graph showing Standard's quantities sold doesn't rise. If you take the period, 1931 to 1946, a period of 15 years, I say it doesn't rise. It is a wavy line, but the net result, as I read the graph, is that in the year 1947, because the graph was projected to 1947, what you may call Standard's proportion of available is less than it was in the year 1934, before the dealer agreement came into vogue.

Now, the same thing is true of these other graphs depict-

ing Standard's position in the case of lubricating oils, tires and batteries.

Now, there hasn't been very much attack made upon these schedules. But before I come to that, let me call attention again to the Pearsall case.

[fol. 2118] In the opinion of the Pearsall case it is said:

> "It is interesting here to note that it was only five years previous that petitioner entered into this doubtless then well standardized business, in competition with many others, most of whom have arrangements with their jobbers more or less similar, and that in the face of this competition, in such brief time built up a business of about four million pounds for its last year. From this it may well appear that the similar practice by others in the same class did not result in stifling of competition and monopolizing the trade to the substantial or serious detriment of this recent entrant there. * * *"

There is an indication that the Courts of Appeals take the view that, in determining whether there has been substantial lessening of competition, you should look into the change in position of the company that is charged with stifling competition or monopolizing it.

The Court: May I interrupt here for a minute? I was going to mention this yesterday while Mr. Dixon was speaking. I think I will mention it now.

One difficulty is that in all of these matters, whether we are dealing with monopoly of patents or generally, there is to my mind a complete shifting of position with the high courts as to the effect of restrictive agreements.

[fol. 2119] To give you an illustration—Mr. Dixon will know that because he is appearing amicus curiae in a case of mine and has succeeded in convincing the Circuit Court of Appeals that I was wrong so far. There is a petition for rehearing in the Supreme Court and I trust it will be granted, because it will settle very important questions of law. I held, some years ago, that an exclusive licensing agreement which bound a licensee to manufacture and promote only the manufactured article was not against public policy as violating the Anti-Trust Acts. That question arose in a case I decided seven years ago, *Kammerer* v. *McCullough*. The case has been pending in the higher

courts for that length of time and my decision upholding the patent is final. But new lawyers came in and got new ideas, so, for the first time, they raise the point that the contract was against public policy.

There was just one of those general allegations in the answer and in the cross-claim to that effect. However, no evidence was offered at the trial and I made no finding on the subject. In fact the findings were approved as to form by the losing side. Then things began to happen.

The question was raised in the Supreme Court and the Supreme Court first denied certiorio-ari and then granted it, and then having granted it they dismissed certiorio-ari on the ground that it should not have been granted in the first [fol. 2120] place, and sent the case back. The case went to the Circuit and the Circuit Court, instead of determining the matter on the basis of the record, sent it back to me to make findings. Then I made findings in which I held this was within the limit of the monopoly.

At that time the Trans-Wrap case had not come out, wherein the Trans-Wrap case held that the agreement of the licensee giving the licensor the full benefit of all the patent improvements was not a violation of the law, although the Supreme Court case in that case says it might be a violation of the Anti-Trust Act.

This is a preamble and I am doing it for your enlightenment because Mr. Dixon knows about it, because of his intervention in appearing as amicus curiae convinced the Supreme Court I was wrong. I want you to know the problem that confronts me and the average trial judge in a case in interpreting these laws and trying to formulate a decision on the basis of what I take to be a complete shifting of emphasis in the higher courts. Well, the case came back to me. The Circuit Court of Appeals, instead of determining the issue on the record, sent it back to me with the idea to hear evidence and make findings on this issue. I offered counsel an opportunity to introduce new evidence and he said he did not want to introduce new evidence; he relied upon the wording of the contract itself and upon the circum- [fol. 2121] stances they were in. I made very elaborate findings in which I held that this was not a restriction on commerce, was not against public policy as violating either of the Anti-Trust Acts; that, furthermore, it was a joint venture by the parties. The parties had pooled their pat-

ents with the idea of exploiting them and they were not excluding anybody else from the field, and that none of the cases relating to the use of the things patented applied because they were manufacturing this one only and they were giving their services only for this one. And I took the view that when two men enter into a joint venture of partnership they can agree that while this partnership is in existence, a man will promote only a certain tool. That was an oil tool.

So the case went to the Circuit and the Circuit Court of Appeals decided that the order I made was not an appealable order; that they ought to wait until the accounting, which had been held up for seven years, was completed, and then appeal from the final order.

Once more certiorari was asked of the Supreme Court and certiorari was granted. And then on certiorari the Supreme Court reversed the Circuit Court of Appeals and held that the order was an appealable order, but instead of deciding the case then upon the record which they had before them, they once more sent it back to the Circuit Court of Appeals.

[fol. 2122] With the beginning of the first petition, first, the main office and afterwards, Mr. Dixon—I am not criticizing him; I am just telling you the situation—Mr. Dixon, representing his department, the Anti-Trust division, appeared as amicus curiae in all these cases and filed briefs both before the Supreme Court and the Circuit Court. I do not know whether he participated in the oral argument but he participated in all these arguments, to contend that even a limited agreement between a patentee and a licensee which limits the licensee to the exploitation of that one tool is against public policy and in restraint of trade under this Act. And he succeeded in convincing two judges of the Court of Appeals that he was correct. But Judge Bone, former senator from Washington, wrote a very elaborate dissent, and the case is now before the Supreme Court on the petition for certiorari which has not yet been determined. I presume it will be determined before they recess.

I am pointing this incident out to show the trend in decisions which is brought about by the insistence of the Anti-Trust department, not only in their own cases in which they are concerned, but in other cases in which they are not concerned, in succeeding to establish before the courts a nar-

row concept which would exclude what we have been led to believe in the past were legitimate practices. And that is the problem which confronts us in every case that comes before us.

[fol. 2123] They intervened in that case as friends of the court. It was not an action brought under the Anti-Trust Laws. There were two actions tried: By law, first, on an action brought by the infringer—by the alleged infringer—I call him the infringer because I found he infringed the patent, and that decision is final but the losing parties in that case, the infringer, with the aid of the Government, has succeeded in convincing the Ninth Circuit, you see, that even in that kind of an action in which the public is not interested directly, where an admitted infringer was found by decree which has become final, can still deprive the patentee and his licensee of the benefits of their inventive genius upon the plea that the public policy was injuriously affected by that agreement, limited to two particular persons as to one tool, one particular tool.

Mr. Hall: I had noted, your Honor, in patent cases the trend that your Honor speaks of, but I had not noted it in other cases. It seemed to me that there was a disposition in patent cases to restrict more and more narrowly the statutory monopoly enjoyed by the patentee.

The Court: But it is not the restriction, it is the ground that they do it upon, because they refer to the concept of restriction of trade in the Anti-Trust cases in order to do it. And even in the Trans-Wrap case they say that while [fol. 2124] they are supporting the contract as being valid, it may be in violation of the anti-trust law, but they chose not to decide that but send it back. And constantly it pops up. Again the court raises the point, and I may illustrate it again by the Brown case. The Brown case is the raisin control case. I think I referred to it in the course of argument.

Mr. Hall: Yes.

The Court: In the Brown case this situation arose: That was an action against a state officer to enjoin the raisin control under the California Marketing Act which was heard before a statutory court of three. Two of the judges held that the control interfered with interstate commerce; I held that it did not. The case went to the Supreme Court and during argument, there again the Anti-Trust division ap-

pears as friends of the court—no; they did not appear. The court asked the attorney general to appear in the case because the court raised this question: As to whether the control policy established by the State of California was not a violation of the Anti-Trust Law. Of course, there was a very perfect answer which neither the court nor the attorneys saw, that that was not the kind of case in which that question could arise. Because there are only three actions that can be instituted under the Anti-Trust Laws, two by the Government and one by a person—an action in equity [fol. 2125] like the present one, a criminal prosecution by the Government, and an action for treble damages by a person who is injured. That was none of those cases, therefore, the question of the validity or invalidity of the contract did not arise. It was a state affair and we were merely asked to stop the enforcement of a state statute, and the only ground upon which we could stop its enforcement is—not that it violated the Anti-Trust Law, but that it was unconstitutional. And nobody raised the question of the effect of the Anti-Trust Act. But at the hearing the Chief Justice raised the point and nobody was ready to answer it. Mr. Walter Bowers, representing the State of California, and the others did the best thing they could; they asked for time to prepare in the matter and the matter was set for the argument and the court requested the Anti-Trust division to appear and cover that phase of the case.

Personally, I think that question was not before the court and the mere fact that the court brought it in did not make it so. Nevertheless it was there and the court proceeded in the opinion to determine, first, that a state may be guilty of Anti-Trust violations if it sanctions the type of arrangement which resulted in restriction; and second, that in a particular case it did not matter.

Ultimately, my position was sustained so I ought not to [fol. 2126] complain. But what I am doing is to point out what to me is the fact, that the courts have become monopoly conscious and bring up the question of all sorts of cases whether the question is directly involved or whether the litigation is purely between private parties or not.

Mr. Hall: Would you entertain a motion to adjourn?

The Court: Yes; I was going to. You are at a stopping point and I just wanted to bring that out for whatever comment you desire.

Mr. Hall: I will try to think up a comment during the noon hour, your Honor.

The Court: Because these are the trends which you have to take into consideration where you consider a large body of law and decisions, which, unless you find a threat present, not to the community, but a dissonance, if I may use a musical term, just like in the realm of administrative law. Unless you start with the idea that there is no general body of administrative law, what administrative power be exercised depends upon the particular control and the particular administrative process established, you cannot find head or tail to these decisions. But once you start with the idea that the courts have said one thing when they are dealing with an administrative body, for instance, which controls the entry of aliens to the United States, and another one when you are dealing with what the Interior Depart- [fol: 2127] ment or the Commerce Department does in their own field, you see, then you can strike a body of decisions that throw law on the particular subject.

Mr. Hall: Yes.

The Court: All right; 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p.m. of the same day, Thursday, May 27, 1948.)

[fol. 2128] LOS ANGELES, CALIFORNIA, THURSDAY, MAY 27, 1948. 2:00 P. M.

The Court: Proceed.

Mr. Hall: If the court please, I mentioned this morning the graphs prepared by Mr. Dern. These graphs show a line which is called the Standard Supply Line. The graph is scaled or the line is scaled against what we have referred to as an industry total.

Now, in the case of gasoline, that industry total is based upon tax figures, and those tax figures include petroleum products other than those sold through service stations. In other words, the total, our industry total, includes within that total not only the retail total, but other products that do not go through a service station. However, Mr. Dern in his testimony, and it is uncontradicted, not once, but on three occasions pointed out that that industry total rose and fell in the same proportion as the total passing through

the service stations. His testimony in that respect may be found at pages 1253, 1254 and 1278 of the transcript.

Some criticism seemed to be expressed in the cross-examination of Mr. Dern concerning his Oregon figures, and the government produced and marked in evidence Government's Exhibit 104, which shows this to be a fact, that considering the period expressed by Mr. Dern in his graph, the [fol. 2129] tax figures of Oregon prior to July 1, 1943 included not only gasoline, but distillate butane, propane, diesel and fuel oil; that after July 1, 1943 they did not include that.

I suppose the purpose of the government's showing was to indicate that our base figures had varied as relates to the period prior to July, 1943 and after July, 1943. But unfortunately for the government's contention, it proves just the opposite of what we would expect the government to wish to prove by that exhibit, for if your distillate butane, and what-not, had been included after July, 1943, the total base figure would have been that much larger and Standard Oil's retail sales would have been that much smaller in proportion, and your supply line would have come down that much more instead of going out.

Now, Standard's outlets have decreased in number over the years. Mr. McClanahan, the first witness called, the vice-president of Standard, testified that in 1938 or 1939 Standard had around 8500 retail outlets. He said there might be a margin of error there of 10 per cent, because he was speaking from recollection. The margin of error would bring it down to 7,650.

Now, then, at the present time the retail outlets, including the open accounts, come to about 6,000, so that there has been a loss—a loss—in accounts by Standard during a 10-year period of 2500 outlets, according to Mr. McClanahan, [fol. 2130] and that testimony is undisputed.

Your Honor will recall the testimony of Mr. Thompson that the company seeks as few outlets as is consistent with service to its customers, with service to its marketing area, —as few outlets as is possible in accordance with their balanced distribution scheme. That is perfectly reasonable and logical because nobody wants to multiply unnecessary outlets in an industry of this character.

Let us go a step further. Mr. Thompson testified, and it is undisputed in the record, that between 1931 and 1941

a ten-year period, Standard constructed only 8 per cent of the newly constructed service stations upon vacant sites, and that during the period 1942 to 1947 Standard's proportion of the new construction was only 8.7 per cent.

This I submit, your Honor, is very far from being evidence of a lessening in competition as a result of monopoly implemented by the contracts.

Now, the government called to the stand——

The Court: Let me ask you this question.

Mr. Hall: Yes, sir.

The Court: Do you concede that notwithstanding the decrease in the number of outlets that the dollar value of the sales has risen.

Mr. Hall: I am going to come to that right now, your Honor.

[fol. 2131] The Court: All right.

Mr. Hall: I was just coming to that now.

The Court: Then I will give you credit for the thought, and I just anticipated your thought.

Mr. Hall: I was about to mention Mr. Daley. You will recall Mr. Daley, the F.B.I. witness, who was put on the stand, and he was put on the stand for the purpose of showing there had been a tremendous growth in Standard Oil sales.

Let me give you some figures, your Honor, that are really very interesting in that connection. Between 1936 and 1946, according to Mr. Daley, Standard's sales of gasoline increased 58.8 per cent—58.8 per cent. Your Honor, as shown by the figures produced by Mr. Dern, and his testimony appears at pages 1263 and 1264 of the transcript, according to the figures produced by Mr. Dern the increase in gasoline sales over the entire industry was 64.7 per cent. Standard Oil, 58.8 per cent; the industry figure, 64.7 per cent.

Now, Mr. Daley said that between——

The Court: Standard was what? Will you give me the figures again?

Mr. Hall: Standard's increase, 58.8 per cent; the industry increase, 64.7 per cent.

The Court: In what period was that?

[fol. 2132] Mr. Hall: 1936 to 1946.

The Court: All right.

Mr. Hall: Now, Mr. Daley also drew a comparison between 1936 and 1947, and he said that Standard's gasoline sales increased during that period 89.4 per cent. The industry total increased during that same period 87 per cent.

Now, let's get down to lubricating oil. According to Mr. Daley, the government's witness, the increase there between 1936 and 1946 for Standard Oil Company was 62.9 per cent—62.9 per cent. The industry figures,—the industry volume of lube oil over that period, according to Mr. Dern's testimony at page 1264 of the transcript, increased 104.8 per cent—104.8 per cent. That is the industry increase.

Now, coming to batteries, the government's witness, Mr. Daley, testified that in one year, 1946 to 1947,—that in that one year period Standard's dollar volume of sales of batteries increased 90 per cent. That is dollar volume. But let us look at the number of units sold in that period, because the price of batteries may have increased, so dollar volume is misleading. Let us look at the actual number of articles sold during that period, 1946 to 1947, and Standard's increase was 46.5 per cent of units, and the industry sales increased 41.8 per cent of units.

Those are the only comparisons I can give your Honor because of the inability of Mr. Dern to obtain the industry [fol. 2133] total figures for 1947. But I think those comparisons show this, that it is very unfair to say that Standard Oil Company sold more goods over a period, unless you compare it with all its competitors, that is, compare it with the industry and see whether the entire industry wasn't selling more products in the same period.

Here is a point that I would like to emphasize particularly, and that is this: the government has not shown that Standard Oil's gasoline service stations preempted any area whatever. I think that is important in this case, your Honor. The government has shown the location of stations by states only. The government has not shown, and it is certainly not a fact, that Standard has preempted with its service stations any area whatever in the seven western states. In Chicago the defendants in the conspiracy case preempted an entire area, and there were no buyers in that area after they got done with the conspiracy that could buy from anybody else. But can the government in this case pick out Los Angeles County or Multnomah County in Oregon, or any other county or any other area in the seven

western states, and say that we preempted that area? The fact of the matter is that our stations are surrounded in every area—in every area—by competitors, and by a multitude of competitors. That was the whole purport of Mr. Thompson's testimony with respect to balanced distribu-[fol. 2134] tion. We want to cover the area with as few stations as possible, for obvious reasons of economy.

Now, yesterday your Honor made a very significant statement—it was significant to me—and it had to do with the questioning of Mr. Thompson concerning Standard's dealer stations and the merit of sites, the merit of locations occupied by those dealer stations. Your Honor pointed out what is very clear in this case, that there is no evidence—here, again, there is a place where there is no evidence on the part of the government—there is no evidence that Standard preempted good station sites. There is no evidence that it is monopolizing the choice sites anywhere. In fact, the indications from Mr. Thompson's testimony is that the sites of some of the Chevron dealers are perhaps less favorably located than the company-operated stations.

But at any rate that point is a gap in the government's evidence. Standard does not monopolize given sites, the best sites, the most favorably-located sites, or anything of the sort.

How, then, can it be argued that the contracts lessened competition? Other stations freely compete with the stations of Standard Oil Company. If a motorist cannot find what he wants at one, he goes to another, and is that an unusual practice in the retail trade of the United States? Don't grocery stores and drug stores handle particular [fol. 2135] lines of products, and when the housewife goes to the drug store and she doesn't find the product for which she has a brand preference, doesn't she go to another drug store? And isn't that a universal practice on the part of the buying public?

[fol. 2136] Furthermore, the gasoline service station is a unique type of retail outlet in this respect, for the motorist is a mobile customer. He does not have to go to a parking area and park his car under the difficulties now that we all know prevail in Los Angeles city; he does not have to pick out a location near his home or his office. The things that he buys at a gasoline service station are bought in such

manner that he can roll into the station and put them in or on the car and then roll out again. And that produces a mobile customer clientele for service stations which is unique in the retail trade of the country.

Standard finds itself in this western area confronted by powerful and aggressive competition. Let us see what that competition is and see what the record shows. Exhibit II—we are starting with gasoline, your Honor—Exhibit II: 80 companies listed here that marketed over 1,000,000 taxable gallons of gasoline in the seven western states. There are a lot more in the tax records that marketed less, but we pick only those out that marketed over a million gallons a year and there are 80 of those companies.

Turning to lubricating oil, Exhibit GGG, there we have 69 companies marketing their own brand of lubricating oil either manufactured or purchased; 69 companies competing with Standard for the sale to the public of lubricating oil.

We turn to tires and batteries. We have Mr. Thompson's [fol. 2137] testimony of yesterday, and I am reading from page 1484 of the transcript:

> "Q. BY MR. HALL: Is it generally true that competitive companies selling brands of gasoline in competition with the Standard promote the sale of tires, tubes, and batteries through their dealers?
>
> "A. They do. In fact a recent check we made of competitive practices indicated that there were 27 lines of tires and 28 lines of batteries promoted by our competitors to retail outlets.
>
> "Q. BY MR. HALL: That was, as I understood you, 27 separate brands of tires?
>
> "A. 27 separate brands of tires and 28 separate brands of batteries."

And of course that is confirmed, your Honor, by the Government's own witnesses. I asked witness after witness who and what his competition was, and we had innumerable brands of lubricating oil, tires and batteries referred to in the Government's own testimony. That is the competitive picture in which Standard finds itself.

Now, let us see a little about Standard's position in that picture. Mr. McClanahan testified that Standard's position, taking the seven western states overall, was as respects gasoline 12 to 14 per cent.

Let us take the most populous area of the whole seven [fol. 2138] states. That, if the court please, is shown in Exhibit V, the Los Angeles survey made by Mr. Travis. Well, Mr. Travis testified that Los Angeles was the biggest retail gasoline market in the country, if not in the world. If it is in the country, it probably is the biggest in the world. That they have more cars registered there than in four of these western states. And in that market, your Honor, the dealer stations of the Standard were 3.68 per cent of the total—an appalling monopoly, 3.68 per cent. And that is stations, your Honor; that is stations. And those stations were picked up by personal observation and counted. There can be no doubt about that figure.

The gallonage sold by Standard dealer stations in Los Angeles County was 2.45 per cent—an appalling monopoly position to occupy.

In San Francisco the percentage of dealer stations, according to Exhibit Y, Standard dealer stations, was 6.98 per cent; and those dealer stations in the San Francisco area handling Standard gasoline sold 5.52 per cent. That is not monopoly in anybody's language, if the court please.

As stated in the Boro Hall case which your Honor cited—yes; your Honor cited it in the San Francisco case—taking the plaintiff's affidavits on its motion at their face value, there can be no doubt that there was ample competition in the low-priced car field in Brooklyn. That is a factor; that [fol. 2139] is a factor in determining whether there has been a lessening of competition.

Ample competition. And those Los Angeles and San Francisco survey schedules are as informative as any piece of evidence in this case. In the Los Angeles area the minor and secondary companies had 47.15 per cent—47.15 per cent of the gasoline service stations and 43.60 per cent of the gallonage.

Counsel made a comment upon Mr. Travis' gallonage figures, and I think it was the Los Angeles survey, yesterday, that I think is wholly unjustified. Those figures are annual figures. Mr. Travis in referring to a monthly figure was referring to a monthly figure which was multiplied by 12 in order to arrive at an annual figure and, as I understand it, that was the purpose of counsel's cross examination, to try to show that the one month he had taken and multiplied by 12 was not a fair month; and we supplied counsel on the

record, with the figures yesterday which show that that month was the fairest possible or average month and he never offers them in evidence.

Let us go a step farther, your Honor. These competitors of Standard Oil Company of California have been growing over a period of years. Let us see whether they grew faster than Standard Oil in their retail sales or whether they lagged behind the Standard. Just a few figures there I think are interesting.

[fol. 2140] According to Exhibit Z the gasoline sold by Standard through dealers during the period 1941 to 1946, the increase in the gasoline sold during that period was 26.8 per cent—26.8 per cent, the increase of Standard Oil Company.

Now, let us compare that with the figures of some of these other companies, and I am talking now about gasoline and I am talking about the period 1941 to 1946. Union Oil Company's increase during that period was 90 per cent; General Petroleum's increase during that period was 165 per cent; Associated Oil Company's increase during that period was 34 per cent. And I cannot give you, because the companies themselves did not furnish the information, the comparable figures for Richfield, Shell or Texas.

Now let us turn to lubricating oil. The increase in Standard's sales during that period 1941 to 1946 in lubricating oil, according to Exhibit AA, was 43.8 per cent—43.8 per cent. Let us carry that figure in mind and see what the increases of some of these other companies were. Union Oil, 98.2 per cent; General Petroleum, 174.9 per cent; Associated Oil, the Tide Water Associated, 54.8 per cent.

But, we do not need to stop there to show a growth in competition. Let us look at some of the Government's testimony. Mr. Ackerberg, he was a man interested in MacMillan lubricating oil, his testimony is at pages 221–223 of the transcript. In 1947, he says, MacMillan dispensed their—[fol. 2141] lube oil through 9,000 to 10,000 accounts in the seven western states. He says in 1946 it was not that high. A growth for MacMillan in the output of lubricating oil in a period of one year.

Let us look at the testimony of Mr. Beman, the president and general manager of the Pennzoil Company, pages 306–307 and 308 of the transcript. In 1916, Mr. Beman testified, Pennzoil was handled in this western area through

2,000 retail outlets. In 1946 10 (30) years later, according to Mr. Beman's testimony, Pennzoil was handled in the western area through 12,000 outlets—12,000 outlets for Pennzoil in the western area.

And Standard Oil Company of California, which is a far bigger company than Pennzoil, in the same area has 3,000 outlets.

Oh, these lubricating oil people testified to a lot of outlets, but let us see about one of the increases here. Here we have the Arthur Haven Company, wholesale dealers in auto supplies, selling tires, tubes, batteries, and miscellaneous accessories. Mr. Haven's testimony is at page 657-658 of the transcript. He says that in 1946 he sold to 3,500 service stations. A small distributor, handling about 10 per cent, handling his product through about 70 per cent as many outlets as Standard Oil Company has in the seven western states.

[fol. 2142] But that was 346, 3500 in '46. In 1947 the same outfit sold to approximately 7,000 separate stations in the western area.

I might go on, but I won't, your Honor, along this line to show volume and a tremendous number of outlets for all these people who sell lubricating oil, tires, tubes, and batteries.

I want to read just a very little bit from the opinion of the lower court in the Pick case because the opinion in the Supreme Court is very brief, as your Honor will recall. In the Pick case the court said, in the lower court—it is 80 Fed. (2d) 641, reading from page 644:

> "Furthermore, the record shows that competition in the sale of replacement parts for automobiles instead of growing less has substantially increased through the period during which the provisions complained of have been in force and, while it may be that competition would have increased more rapidly in the absence of such provisions, the trial court rightfully concluded that such was not the 'substantial lessening of competition' which the Clayton Act was designed to prevent. * * *"

Standard's competitors have pursued substantially the same practices to get hold of dealers as Standard itself has pursued. There are in evidence the contracts of certain

[fol. 2143] of our principal competitors, and I am not going into that subject.

But here is a fact that indicates that this method of single-pump, single-line handling at a station is not unique with Standard. It is found in this fact: That out of a survey of the gasoline retail service stations in the seven western states 36,000 in number, only 577 or 1.6 per cent were found to have split pumps; in other words, found to be handling the products of more than one supplier.

The proof of the pudding is in the eating, and there is the proof. That is the system prevailing in the seven western states today. These schedules which principal competitors brought in show, as far as I can find out from those schedules, the total number of split-pump accounts that they serve, all six of them, was only 149 out of thousands of gasoline service station accounts.

Our principal competitors in their campaign to sell a dealer or get a dealer to contract with them certainly carry on business just as Standard Oil Company of California carries on business. Government's Exhibits 16 and 17 show that. In the one case, in the case of Exhibit 16, there was competition with respect to a dealer at Kanns, Utah, and there the exhibit itself shows that the Utah Oil and Refining Company was competing with Standard by the same means to try and get the dealer to sign a contract with it. And in [fol. 2144] Exhibit 17, The Texas Company was competing with Standard Oil Company of California for the patronage of a certain dealer.

Mr. Thompson on the witness stand, two days ago, testified that Standard's competitors in endeavoring to obtain the patronage of a dealer, make improvements for the dealer, offer additional equipment, and absorb rentals and make loans.

And here is an interesting bit from one of the Government's own witnesses. Mr. Winchester, the field representative of the Cezan Company, distributors for Dayton tires, testified that it was unusual for a dealer to have a Dayton tire franchise and still handle competing tires; that he knew of no companies in his territory in Southern California where the dealer got a Neon sign put up for him by Dayton where the dealer was handling competitive tires. Mr. Thompson on the witness stand was asked if from his observation and experience it was generally true that the

dealer stations which handled the gasoline of Standard's principal competitors handled the lubricating oil put out by the company whose gasoline is sold at the station; and Mr. Thompson said that that was the uniform practice.

So Standard is confronted by powerful, by aggressive competition, and by numerous competitors. That building schedule that I referred to this morning in the Long Beach area is very informative. 40 new gasoline service stations [fol. 2145] being put up by Standard's competitors in an area where Standard was not at the time constructing a single Chevron station, and that is Exhibit UU.

Mr. McCall, who was a representative of Tide Water Associated Oil Company, was under cross examination by Mr. Dixon. Question to Mr. McCall:

> "Now, Mr. McCall, does your company ever endeavor to sell any gasoline to any Chevron dealer operated stations? Does your company solicit business of selling gasoline to any dealer operating a Chevron station?
>
> "A. Yes.
>
> "Q. Does it endeavor to sell it gasoline, is that correct?
>
> "A. We endeavor to take the whole station."

That is just what they endeavor to do. That is a part of the competition which, according to the Government's theory, has been lessened.

I submit, your Honor, that no case can be found at all comparable to this in which an injunction has been upheld under similar conditions or under comparable conditions. I submit that the principles which govern a court of equity must be applied in this case, and I know from your Honor's remarks that you are mindful of those principles.

Let me refer to one case on the equity feature, an anti- [fol. 2146] trust case which is not referred to in the brief, I believe, and that is *DeBeers Consolidated Mines* v. *United States*, 325 U. S. 212, at 218, where a violation of Sections 1 and 2 of the Sherman Act was charged. The court in that case remarked that if it had jurisdiction, such jurisdiction must be exercised, and I quote: "according to the general principles which govern the granting of equitable relief."

And the court added that it had no different power than those traditionally exercised by courts of equity.

We have pleaded an equitable defense here. It is the fifth defense in our answer. We allude therein to the competitive situation, and I think it should appeal to a court of equity.

What happens? What happens if an injunction is granted against Standard Oil Company?

Overnight, overnight the competitors move in and by the time you can turn around the investment of years and the labor of years is dissipated.

I have pointed out already that the Government has the burden——

The Court: As long as you mention that, you know we have a way of avoiding that situation when it arises, in order not to deprive a defendant of the benefit of an appeal where the injunction is of such a character that, if allowed, the injury would be so great that regardless of the ultimate [fol. 2147] outcome of the case the damage could never be repaired, and that we sometimes do on our own motion.

I did that in a case, a very interesting and important case, involving a trademark, where I was asked to enjoin the Brooks Clothing Company from using the name "Brooks" in their name as a suit of Brooks Brothers Clothes, an old established firm.

Without any request on the part of counsel, having reached the conclusion that the use of the name "Brooks" was a violation, not only of the trademark rights of the plaintiff, but unfair competition, I provided that mandatory injunction should not issue pending the final determination of the case, and three months later, which I later extended to six months, with the result that when ultimately the case was affirmed by the Circuit Court of Appeals and certiorari was denied by the Supreme Court, the company was placed in a position of readjusting its affairs by acquiring the name of another firm, very well established, Harris & Frank, and thus transition from one to the other was made without any harm to the company.

Mr. Hall: I think the difficulty goes deeper than that, your Honor.

The Court: I beg pardon?

Mr. Hall: I think the difficulty goes deeper than that.

The Court: Well, so long as you have mentioned that, I [fol. 2148] am showing that there are ways, if I should reach that conclusion, of forestalling any immediate harm

until such a judgment becomes final. I am not anticipating it but so long as you are mentioning the harm that would flow incidentally from the effect of any such restriction, I have referred to the chancery powers which we have of avoiding them insofar as they can be avoided.

Mr. Hall: I have been talking only incidentally about the Government's failure of proof in this case—a failure of proof which becomes all the more conspicuous in view of the requirement of the law that the Government must make a factual showing of illegality. And I have already mentioned that the Government has not shown that Standard preempted through its dealer stations any specific area whatever; and I have already pointed out, in the second place, that Standard is not shown to have the favorable locations, the base locations, the most easily accessible locations. I have pointed out that there is no showing at all as to what Standard's locations are. They might be the worst of the lot, and I am sure from the gasoline picture, they are probably worse than the Union Oil Company locations and maybe one of the other companies.

But now let us take a little closer view of the Government's case and see what they have shown. Well, they have shown the nature of the contracts; they have shown the [fol. 2149] number of contracts outstanding, our contracts; they have shown the number of our service stations involved; and they have shown the quantities of products sold through Standard Oil dealers.

All right. On the lubricating oil and the tire, tube, and battery phase of the case the Government called quite a parade of witnesses. Distributors and salesmen in these commodities came in who said they had difficulty in selling to Standard dealers in certain cases, and the dealers found no fault with their competing products, and in a limited number of cases the dealer was interested in the competing products. Now, that is what they told the witness on the stand. It is not natural, it is just not common sense that a dealer is going to criticize a product of a salesman. That just starts a fight. So these dealers probably did not criticize products of others.

The dealer said that a few customers asked for competing products and, in a very few instances, the dealer intimated that he was interesting in handling competing products. Now, those were the dealers that were called.

The fact that customers asked for competing products proves nothing when you consider the market situation and the mobility of the customers. As I pointed out previously, in any retail store you may encounter the same failure to provide a brand conscious customer with the particular [fol. 2150] brand that he likes. The matter was brought to a sharp focus by the testimony of dealer Bryan, who testified that customers asked for 50 different brands of lubricating oils; and then in response to my question he said that it was quite true that if he filled up the yard of his station and the office and the lubricating room, he would still have people coming to his station, asking for brands that he did not have in stock.

Now, are these dealers supposed to be a cross-section of the dealers?

[fol. 2151] If they are, it is a cross-section that is no cross-section at all, because, of course, they are the hand-picked skimmings by the F.B.I. Four of the thirteen dealers called—or, only thirteen dealers out of the 5,000 were called; 13 out of 5,000. Four of them were ex-dealers, and of the remaining dealers three of them obviously gave testimony in favor of the defendant instead of in favor of the plaintiff. They were selected: four from San Francisco, five from the Los Angeles area, two from Nevada; one from Portola, California, and one from San Diego, California.

Now, in addition to the dealers there were 34 lubricating oil, tire, tube, battery and accessory executives and salesmen called, and those people in their testimony referred to 62 dealers. But three of those 62 dealers appeared in person. So all of the dealers heard from either in person from the witness stand or by hearsay from the mouth of a salesman were 72 out of a total of 5,939.

Is that substantial restraint, the kind of substantial restraint the statute talks about?

But let us get away from fractions and look at the overall picture. Has there been any showing of loss to a competitor of Standard's?

Your Honor knows that in most of these antitrust cases they bring in somebody who claims that the monopoly or conspiracy hurt him financially. Well, we haven't had any [fol. 2152] thing of that sort in this case. And I might

quote the language of Chief Justice White in the Steel Corporation case, as applicable here. He said:

> "A situation is indeed singular, and we may wonder at it,—wonder that the despotism of the corporation, so baneful to the world in the representation of the government, did not produce protesting victims."

Let's see who the protesting victims might supposedly have been here. I am not going to talk about the salesmen who didn't make sales, but I am going to talk about their superior officers, the executives of the companies that might supposedly have come in and said, "We suffered financial loss."

That is Mr. Shidemantle, vice-president and general manager of Quaker—no, Mr. Beman, president and general manager of Pennzoil; Mr. Shearer, the head of Buck-Shearer Company, the Kendall distributor; Mr. Akerberg, the sales manager for MacMillan; Mr. Peck of Peck Brothers of Portland, a TBA distributor; Mr. Haven of Arthur A. Haven Company, wholesale auto supply company; Mr. Katzev, manager of the tire division of Ceazan Company, distributors of TBA; and Mr. Turner, the division manager of Dunlop Tire & Rubber Company at Los Angeles. None of them complained of being shut out of a market, and Mr. Beman testified that his market had [fol. 2153] jumped from 2,000 to 12,000 outlets. Not one of those people has told the court of financial losses suffered because of these nefarious practices of Standard and the other companies, followed without criticism from the government or any government official for over 18 years.

Now, the government contends that there has been a shutting out of the market, and that this is a substantial lessening of competition and an unreasonable restraint. But how can it be said that any restraint is unreasonable, or any lessening of competition is substantial, without knowing something about the market from which the competitor is said to have been excluded? There is no evidence whatever in our case showing the total number of outlets in the seven western states through which lubricating oil, tires, tubes and batteries and other accessories are sold, and I point that out, because the government has emphasized in this case lubricating oil, tires, tubes and batteries and accessories to the exclusion of gasoline.

Now, all we can infer from the evidence, your Honor, is that the outlets for those products are simply legion in number.

I have referred to the testimony of some of these lubricating oil companies: MacMillan, 10,000 accounts; Pennzoil, 8,000 to 12,000 accounts; Shidemantle testified that Quaker State sold between four and five thousand retail outlets [fol. 2154] in Los Angeles County and fourteen counties surrounding Sacramento; the Arthur Haven Company, which is not a large company, sold to approximately 7,000 accounts.

In other words, when you come to tires, tubes and batteries and accessories, the outlets for those are not only gasoline service stations, but they are people like, as your Honor can take judicial notice, the Western Auto Supply Company, who are tire houses, and people like Sears, Roebuck and Montgomery Ward with all their far-flung, widespread organization.

As Mr. Thompson testified, and he wasn't speaking about Standard Oil Company, but speaking about the industry generally, only 23 per cent of the people buy their tires at the same station where they buy their gasoline. That is just common practice.

Now, there is another element in this case which I want to emphasize because it is emphasized in the Pick case. In the Pick case, and again I am reading from the decision of the lower court because it is more complete than the decision by the Supreme Court, in 80 Fed. (2d) 641, reading from page 643, the court said:

> "* * * Defective parts,"—this is a part of the rationale of the Pick case, and I think it is important—"defective parts, preventing efficient operation of cars, bring dissatisfaction with the automobiles themselves. [fol. 2155] The natural result is blame of the manufacturer and consequent loss of sales.
>
> "The automobile is a complicated mechanism, the refined product of scientific engineering after long investigation, close competition, experiment, and practical experience. Replacement and repair parts must be of accurate measurement, appropriate, satisfactory material, and proper mechanical construction. Otherwise, disaster may result. Appellees insist with their dealers, therefore, that the latter shall not repair ap-

pellees' product with used or secondhand parts or with parts other than those manufactured by appellees, or for them under their specifications, for the express purpose of replacing parts in or repairing their product."

Now, thus, we have as one of the reasons at least for upholding the restriction in the Pick case this fact, that there should be protection to the good will and reputation of the products supplied to the dealer.

Now, apply this to our case. Standard's requirements contracts are a necessary part of a practice of long years standing, to protect the good will and reputation of Standard's products. And I think that everybody in the indus- [fol. 2156] try is going to say the same thing.

As pointed out in the Pick case, the automobile is a complicated mechanism. Damage to a person's automobile at a station operated by a Standard dealer inevitably impairs the good will and reputation of all Standard dealers and Standard products, just as they did in the Pick case.

Why, then, should Standard look with favor upon one of its dealers using for a customer's automobile lubricating oil which is not Standard's product, which Standard knows nothing about, and the selection and use of which is not explained in the Lubriguide which Standard furnishes to its dealers. And that "Lubriguide" if the court will recall the testimony, was geared not with reference to any lubricating oil, but with particular reference to the products of Standard Oil, as used in various makes of cars. If the oil or grease isn't what the car ought to have, then the car is injured and the customer isn't inclined to go back to a Standard dealer or to purchase Standard gasoline.

Now, isn't this exactly the point emphasized in the Pick case? It was held that to preserve good will of General Motors automobile, it was proper for the motor manufacturer to require dealers to not use in the repair of Chevrolet cars parts not manufactured by Chevrolet. Here it should be held that to preserve the good will of Standard's line of petroleum products, it is proper for Standard to require [fol. 2157] its dealers to use, in the servicing of automobiles, only petroleum products manufactured by Standard.

There has been no affirmative showing in this case that the contracts complained of lessened competition. A pic-

ture has been clearly shown of a company with many customers. These customers must be and are being provided for. To provide for them the company trains and aids its dealers, and spends for this purpose over a quarter of a million dollars annually. To provide for these customers, the company has made a capital investment of $16,500,000 in land and depreciable equipment alone, and spends over $1,000,000 a year in station painting.

The company does not seek more and more stations. Rather, it seeks as few stations as possible to serve its customers.

It would be strange if the company, called upon, as it is, to make these expenditures to meet competition and in the face of widespread and aggressive competition, did not seek the measure of security and stability afforded by these contracts. Only by the security and stability afforded by these contracts is it possible for the company to meet this competition and serve its customers.

The result is not a lessening of competition, but the natural result of honest and legitimate enterprise. No one is shut out of a market any more than would be true in [fol. 2158] the case of hundreds of thousands of contracts in force today all over the country by which the seller agrees to sell and the buyer agrees to buy commodities over a future period.

Dealers—dealers are not going to thank the government for its efforts in this case, if the government is successful. What does the dealer want particularly? Summed up in the testimony of the government's first witness, Mr. McClanahan, he testified, and I am reading the substance of his testimony only: Dealers themselves are not favorable to dividing their interests with suppliers for two reasons: they haven't the same merchandising opportunity from the supplier, and they haven't an assurance of supply. It is because there is no obligation on the part of the supplier to continue supplying a split pump account that such accounts have to a great extent ceased to exist.

Bear in mind that they used to have split pumps, and that they ceased to exist, not by reason of the contracts made by Standard Oil Company, but by a natural economic development, under which the dealers sought security, and that security is all the more vital to the dealer at the present time, with the prospect of a shortage of gasoline. The

dealer in petroleum products has peculiar need for a requirements contract. It isn't a one-way street. He has no capacity to store, and even if he could store, he is a small [fol. 2159] operator who cannot ordinarily shoulder the burden of a large inventory. Yet he must have the assurance of a future supply and deliveries at frequent intervals over a period of time.

I wonder, your Honor, what socialistic scheme was hatched in the departments at Washington to foist upon the West Coast, and I think that the whole oil industry on the Coast would agree with that statement, that the government's plan here is nothing but pure, unadulterated socialism.

Let me read you from the opinion of Judge Leahy in the Cornfield Manufacturing Company case at 70 Fed. Supp. 477. It is an antitrust case, and this is 79 Fed. Supp. 477, reading from page 481:

> "* * * Looking at the reality of our economy, I have never seen a distributor of Ford automobiles, for example, also distribute a car of another competitor within the same price range, such as the Chevrolet; nor does McKesson & Robbins distribute the drug supplies of Parke-Davis; . . ."

This system of requirements contracts, the system that prevails on the West Coast today, is not anything new.

In the Standard Oil of New Jersey case, 47 Fed (2d) 288, I will read from page 300. That was the consolidation case in which the question of competition or lack of competition between two large units of the oil industry was a very [fol. 2160] important question. The judge says:

> "* * * In the initial stages, both of these products."—and he is talking about gasoline and lubricating oil. This is Judge Kimbrough Stone, and he goes into the history of the thing. —"In the initial stages, both of these products were furnished almost entirely by independent retailers, and such dealer might have either or both to offer the automobile customer. It was not unusual for such customer to get gasoline at one place and oil at another. The struggle for this trade made the pleasure of that customer worthwhile, and such pleasure and convenience soon directed that he be able to procure oil at the same place and time that he

bought gasoline, and that distances be not too great between the places where he could procure them. A factor which aided this development was that, for the most part, the companies which made gasoline also made automobile lubricants, and the natural thing was to press the entire automobile line upon the retailer. The final step in this matter is that the refining companies have widely, rapidly, and increasingly established their own retail stations . . . at which they handle only gasoline and oils of their own manufac- [fol. 2161] ture. At present, this retail distribution is in the hands of independent retailers (such as garages and filling stations) and of company owned or controlled stations, with a pronounced tendency to carry a unified line by the independents, and with a decided tendency toward expansion of the company owned or controlled stations where only the products of the particular company are offered . . ."

The Court: I want to make this observation, and then I will take a recess to give you a breathing spell, and that is this: The position of the government, if sustained, would not necessarily result in a return to the practices which these cases say were unsatisfactory, and which were succeeded by these arrangements which aimed to limit the goods to be handled at a certain station.

Mr. Hall: We were not able to contradict that, your Honor, because that evidence was shut out. That is what we tried to show.

The Court: Because I do not think it is a question of proof or that it is a subject of proof. But if you are using these cases to show the origin of the rule, and to argue its salutary character, which is legitimate argument and which I have said was the proper subject of argument, despite the fact that specific evidence to show that effect I considered outside of the main proof, and much more so, as it was attempted to be shown by opinion testimony. [fol. 2162] Even the large group of cases which you cite in your brief beginning on page 45 with the "Restatement of Contracts," state that the right to deal with a person exclusively is limited, so far as the federal law is concerned, by the possible effect on commerce.

For instance, to illustrate that, on page 48 you cite the *Excelsior Motor Manufacturing & Supply Co.* v. *Sound*

Equipment case, and where the court, while sustaining the exclusive dealer contract, said this:

> "It is difficult to believe that appellants are serious in arguing that the contract in suit violates the Clayton Act because it fixes a resale price and provides that Sound Equipment shall not deal in the products of any competitors. Such contracts violate the Clayton Act only if their effect is 'to substantially lessen competition or tend to create a monopoly in any line of commerce.'"

What the government seeks is the prevention of the mandatory effect of the clause. It does not seek and cannot by an injunction prevent a particular dealer from voluntarily continuing to get its products, and just as exclusively shutting out somebody else as before.

The position of the government is this, and I may be drawing conclusions——

[fol. 2163] Mr. Hall: Your Honor is drawing conclusions which would have been, I think, disproved if you had permitted us to pursue the line of inquiry I embarked upon yesterday.

The Court: I understand that. I merely am saying that we are speculating on the effect. What the government contends is this, that what they seek, and you will remember they stated that at the beginning when I for a moment, overlooked the particular prayer of the complaint and suggested that they sought to have me end the contractual relations, and Mr. Dixon then said that all they were seeking there was the elimination of these restrictive clauses.

Now, the question I am raising is this, that even the full position of the government does not necessarily stand in the way of the continuance of practices by all these stations, the practice of actually operating single pumps instead of split pumps, and the like.

Mr. Hall: Well, if we had been permitted to introduce that testimony, I believe we could have convinced your Honor that is not the correct point of view; that what the government seeks is this, is the socialism that they want to come right in on the Coast. That is the way the industry feels about it anyway.

The Court: I do not want to start an argument on that subject, and to characterize a thing in a certain way does not help us. As a fact, I think if one understands socialism [fol. 2164] right, they are in favor of concentration and not in favor of competition. Socialism aims at control and not at keeping competition alive. It aims at the concentration of the means of production, so that the State could take them over, and socialists, as I understand them, condemn anti-trust acts, the Sherman Anti-Trust Act, as unrealistic because, as they conceive it, the trend of modern industrialism is towards concentration rather than toward a maintenance of competition.

With that we will take a recess, and then we will go on from there.

(A short recess was taken.)

[fol. 2165] The Court: All right.

Mr. Hall: At an earlier stage of the argument I said that the contracts were not a one-way-street. The Government apparently envisages a situation where the requirements clauses can be eliminated, leaving the contracts in full force and effect for the benefit of the dealer. Obviously, in a contract to buy and sell, if the obligation to buy is removed the consideration for the contract fails and that contract becomes a nullity. So that the net result of what the Government seeks is the nullification of the contract and, from the contract law, there can be no escape from that conclusion.

Your Honor has said that the doctrine of laches does not bar the Government, and while some doubt was expressed in the Southern Pacific case concerning that, I shall assume for the sake of my argument that that be true. But I just want to very briefly call attention to the situation which should appeal to any court of equity and which, in a civil case, would certainly constitute laches.

Here is a system of distribution which has not been criticized or attacked by the Department of Justice until the present time, or attacked by any other governmental body up to the present time. During that period Standard has spent in capital investment on its dealer outlets, land, and appreciable improvements $16,500,000. If the scheme which the Government seeks to foist upon the industry be-
[fol. 2166] comes the prevalent scheme, you can see what

will happen to a number of situations that have been shown in the testimony.

Let me give an illustration. We have a land owner who leases to Standard a site or a service station and in the lease Standard agrees to pay the landowner a rental computed upon the through-put of the station, all the gasoline sold at the station. Along comes the Government scheme and in go the split pumps, the pumps of other dealers. Many of Standard's contracts or subleases with the service station dealers provide for a gallonage rental. So that the dealer, instead of selling exclusively Standard gasoline, sells gasoline of A, B, and C and he pays Standard his rent, only a percentage upon the gasoline that goes through the Standard pump, not that goes through the whole station, whereas Standard has to pay its landlord a percentage based upon the entire through-put of the station, the gasoline going through every pump at the station.

That was brought out in the testimony of Mr. Thompson.

Now, a word as to accessories, and in using that term I am not talking about tires, tubes, or batteries.

The Court: We have accepted that differentiation now that your witnesses have produced. Those come outside of accessories. I do not know what you have called them, automobile supplies, I presume, automobile supplies.

Mr. Hall: There is nothing in any of our contracts, as [fol. 2167] pointed out at page 3 of our printed brief, which requires the dealer to buy accessories from Standard or which requires Standard to sell accessories to the dealer. I will take that back. I think the clause does require the company to sell to the dealer what the dealer requires, but there is certainly no obligation on the part of the dealer. That is all set out on page 3 of our printed brief.

I merely at this stage want to call attention to the fact that the testimony now supports that conclusion, that Standard never forced as a matter of practice, never required or forced its accessories upon a dealer; that it adopted a practical construction of that clause entirely in accordance with the argument that is made in my brief at page 3.

I am not going to speak about interstate commerce——

The Court: I think someone made that statement from the stand, because on one of the copies of the exhibits which I marked up I found the statement of a witness to the ef-

fect that, while as to the requirements of tires, tubes, and batteries Standard determined, especially when there were shortages, the quantity of the supplies, that as to accessories or the things which your witnesses called accessories, which include hub caps, fanbelts and the like, the choice of amounts, numbers, was up to the dealer to buy or not to buy it.

[fol. 2168] Mr. Hall: That is right.

The Court: Except, of course, as one of the men said, that he might try to point out to the dealer the desirability of buying the entire line from them instead of elsewhere.

Mr. Hall: And I mention that in view of the fact that, of course, your Honor will examine the effect of the contracts with respect to the various commodities that have been referred to in the evidence. First, with respect to gasoline; second, with respect to lube oil and grease; third, with respect to tires, tubes, and batteries; and fourth, with respect to accessories.

The evidence has got to be tested as to each of those commodities separately because of the language of the Statute.

The Court: In a case involving multiple commodities I do not think you have to split them up and assay each of them against the standard of criteria, especially where the sales are by the same concern.

Mr. Hall: That is quite contrary to the theory, I think, on which the case has been tried, your Honor.

The Court: The theory of the case is not determinative of the manner of assaying the evidence.

Mr. Hall: Well, let me put it——

The Court: The Government has at no time split it up and tried to show any particular restraint in a particular line. It has been the Government's contention that the en-

[fol. 2169] tire effect of the contract is to shut out any access of competitors to the particular outlets, without particularly segregating them. And, of course, in proving the case the Government resorted to individual witnesses merely because the Government did not have or could not find in the field a concern which furnished all these things in competition with them. That is the only splitting up that I see in the record.

Mr. Hall: Well, I make this point, that under the Statute we have got to look to the effect, the effect of the contract. The contract might have had one effect as to gasoline, it

might have had an entirely different effect as to lubricating oil or as to batteries. The effect is the whole meat of the charge of illegality.

The Court: Well, the effect, however, is not upon a particular commodity; it is upon the line of commerce under the Clayton Act, and under the Sherman Act it is the effect in restraining trade.

The Sherman Act speaks of:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared illegal: * * *"

And the Clayton Act says:

> "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make [fol. 2170] a sale or contract for sale of goods, wares, merchandise,"

and so forth and so on,

> "where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

And when you are dealing with one article, of course, the article is the commerce. Where you are dealing with a multiplicity of articles you have to consider the overall picture rather than split it up separately as to various commodities.

Mr. Hall: Yes, your Honor. But there might very well be a lessening of competition with respect to one of the articles and no lessening of competition with respect to another article.

The Court: That is true, but you cannot split the contract because the contract is inseparable. It is either the whole contract or it is a part only.

Mr. Hall: Oh, no.

The Court: I left my group of exhibits. Will you get them from the envelope?

Mr. Hall: What your Honor has just said is to say that there is no effect given to the statute which uses the word "effect."

[fol. 2171] The Court: The effect is of the contract.

Mr. Hall: Now, a contract can't be split, but what is forbidden here is the effect of the contract.

The Court: Well, but the effect of the contract is upon the restraint of commerce in a number of articles, not in the restraint of commerce upon one. You are saying I will have to split it and determine the effect as to each commodity. Your contract is a whole. The Statute speaks of it as a whole and the undertaking relates to more than one commodity.

Let us take Government's Exhibit 1, the dealer agreement.

> "Standard Oil Company of California, a corporation, hereinafter called 'Company,' agrees to sell to (blank) hereinafter called 'Dealer,' and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at (blank). The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity."

In other words, the contract is a unit and provides for multiple articles.

Mr. Hall: Yes, your Honor; but the illegal thing is the effect of the contract.

[fol. 2172] The Court: Upon the commerce.

Mr. Hall: Upon the commodities. And while——

The Court: You are reading something into the wording of the Statute which is not there, I fear. It may be your interpretation, but the effect is upon the commerce, the commerce in the articles covered by the contract.

Mr. Hall: But it is a commerce in separate articles, your Honor. The commerce is in separate articles and it is perfectly conceivable that under the evidence there might be regarded to be a restraint, the effect might be a restraint with respect to one article and no restraint as to the commerce in the other article. As a matter of fact, there is a splitting up under the contracts. No one has to take one contract. There are several contracts there. The tires, tubes, and batteries, for example, do not appear in any contract except the TBA contract.

The Court: All right.

Mr. Hall: On the question of interstate I shall be very brief because that is gone into at considerable length in our brief. But there is one feature that I do not want to neglect and that is this: It is a point suggested in that portion of your Honor's opinion in the Food and Grocery case which is reprinted at page 13 of our brief. The point is this: Your Honor cites *Anderson* v. *United States*. In *Anderson* [fol. 2173] v. *United States* the court said, 171 U. S. 604, at 615:

> "* * * 'Where the subject-matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct, or restrain that commerce, but that it was entered into with the object of properly and fairly regulating the transaction of the business in which the parties to the agreement were engaged, such agreement will be upheld as not within the Statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is, in any event, but indirect and incidental, and not its purpose or object.'"

The rule of evidence that I deduce from that case and other cases is this: That where the effect upon commerce is direct, the purpose or intent makes no difference; but that where the effect upon commerce is not direct, then a purpose and intent to burden the commerce must be shown.

That same thought is expressed as late as 1940 in the Apex Hosiery Co. case. The court there said, 310 U. S. 469, at 501:

> [fol. 2174] "Here it is plain that the combination or conspiracy did not have as its purpose restraint upon competition in the market for petitioner's product."

And again, reading at page 511——

The Court: Go ahead and I will ask you a question.

Mr. Hall:

> "And in speaking of intent as a prerequisite to liability under the Act where the restraint to interstate com-

merce is 'indirect' it meant no more than that the conspiracy or combination must be aimed at or directed at the kind of restraint which the Act prohibits or that such restraint is the natural and probable consequences of the conspiracy."

And there is considerably more authority to that effect. I might cite *Industrial Association* v. *United States*, 268 U. S. 64.

The Court: But aren't those all conspiracy cases, especially criminal conspiracy, where intent is an element of the offense. The Leader case is a private case, but there is also charged conspiracy between the Apex and others. Where a restraint is not the result of conspiracy, then the intent is not material. If in effect these practices do have that effect——

Mr. Hall: No, your Honor.

[fol. 2175] The Court: —because we are dealing, to illustrate, for instance, in the Food and Grocery case we were dealing with a group of persons who claimed that they had engaged in certain practices and under the Fair Trade Act of California and that their sole object was to secure fair dealings and prevent cutthroat competition. Nevertheless I was called upon at the trial to receive evidence which went behind that asserted object, which showed that the real object was to control prices, not by furnishing lists, but by giving or sending very pointed bulletins every day as to what should be done with a particular commodity which originated in interstate commerce and which constantly flowed to the shelves, so that their understandings affected goods at the end of the destination.

So the language which I have quoted there was relevant to the particular situation here. In a case under Section 1 of the Sherman Act and Section 3, it is the effect, regardless of intent, that is the criterion.

Mr. Hall: I am talking now, your Honor, about interstate commerce, whether interstate commerce is affected by this case at all. You have to cross that bridge before the court has jurisdiction.

Now, this rule that I speak of is not confined to criminal cases. This *Industrial Association* v. *United States* which I cited to your Honor a moment ago was a civil case for [fol. 2176] an injunction. The rule announced in these cases is that where you have indirect effect upon interstate

commerce, then intent becomes immaterial; but that where the impingement upon interstate commerce is indirect, then there must be a purpose and intent to burden the commerce.

No proof of intent to burden commerce has been shown in this case. We are dealing with local transactions. And furthermore, under Section 3 of the Clayton Act, there must not only be an effect upon interstate commerce, but, as pointed out in my brief, the contracts themselves by the very language of the Act must be in the course of interstate commerce, in the course of interstate commerce. That language appears at the beginning of Section 3.

And in *Lewis* v. *Shell Oil Co.*, referred to on page 17 of our printed brief, the court draws attention to that particular language of the section. That is 50 Fed. Supp. 547. I do not think that I quote in the brief that portion of the opinion which points to the difference between "effect upon commerce" and a contract "in the course of commerce" but both are requisite under Section 3 of the Clayton Act.

In the *United Shoe Machinery* v. *United States*, 258 U. S. 451, where Section 3 of the Clayton Act was particularly involved—and I think that this was perhaps the first case before the United States Supreme Court involving Section 3, —the court, at page 465, says this:

> [fol. 2177] "It is insisted that the leases in controversy were not made in the course of interstate commerce and, therefore, cannot be embraced within the terms of the Clayton Act. It is provided in the decree that it shall apply to all leases covering shoe machinery shipped from one State to the user or factory for use in another State in the course of or as a part of the transaction between the lessor and the lessee, resulting in the making of the lease."

You see how particular and meticulous that court was in framing the decree. They exempted from the decree contracts dealing with goods bought and sold within one state.

Now, those opinions point to what I have said in the brief, that by no stretch of the imagination can you say that contracts with a California dealer are covered by either the Sherman Act or the Clayton Act. I cite in my brief *Addystone Pipe & Steel Co.* v. *United States*, where the court makes that very clear, that the decree may not affect local contracts.

In the Carter Carburetor case which the Government cites—and that was a Section 3 case—it is apparent from the opinion that contracts with dealers in Missouri, which was the home office of the Carter Carburetor Company were not included in the decree. And the court says in that case—that is 112 Fed. (2d) 722, reading from page 730:

> "We think that in making such sales and shipments to [fol. 2178] distributors and service stations located in other states than Missouri petitioner is engaged in interstate commerce."

[fol. 2179] So that under no conceivable theory could any decree of this court affect California contracts. According to Mr. McClanahan's testimony, only three refineries are located in California. The petroleum products come from those refineries. They go to service stations in California, and are sold at service stations in California. There is no interstate commerce anywhere in that picture.

The same is true of the tires, tubes and batteries. They are purchased from manufacturers in California, and so far as California dealers are concerned, they go from the accessory warehouses of the company located in California to those dealers. There is no interstate transit there at all, except in the case of the service of the small area at Needles, which Mr. Travis testified was infinitesimal. That is served by a warehouse in Phoenix.

The Court: Those things, by the way, appear also in the three depositions.

Mr. Hall: Yes. This point that I have been discussing, your Honor, is discussed at page 34 of our printed brief.

The Court: Of course, that was anticipatory of the proof. I am talking about the place in the record where the testimony relating to the contracts appears.

Mr. Hall: Yes. Those three depositions, of Mr. Olaine, Mr. Bussert and Mr. Hays, show the flow of goods, all goods, involved in this case very clearly.

[fol. 2180] Forty-five per cent of Standard's stations that have any sort of sublease or contract are located in California. That is shown by Exhibit 6.

Now, just a word before I close about subleases. Of the 5,197 stations that have subleases or contracts of some kind there are 1,798 with subleases. The provisions in the subleases do not come within section 3 of the Clayton Act. The

language of the Clayton Act relates solely to leases of goods, not real estate leases.

Counsel argued that a lease has both a contract and a lease aspect, and that a provision in a lease of real estate can be treated as a contract. If that was the purpose and intent of Congress, why didn't they put it into the Act, because in section 3 they mention leases, and yet they confine it to leases of goods.

Now, obviously, in the case of those stations that are under subleases, and so far as petroleum products are concerned, if any of those stations have in addition a dealer contract or a dealer agreement TBA, the provisions in those contracts with respect to the petroleum products are simply surplusage because the subleases themselves contain the requirements clause with respect to petroleum products, and the contracts in that respect add nothing to the subleases. And if the subleases be valid, as I contend they are, then there is no lessening of competition caused by the contracts [fol. 2181] written in addition to a sublease.

The Court: May not the contract or the undertaking, which is the wording in the statute, occur in any kind of an instrument, and if a lease of real estate also regulated the kind of goods that are to be sold, can you disregard it merely because it is a lease, and wouldn't that lend itself to the possibility of merely taking a provision which relates to a practice within a statute which aims to reach it, and by putting it into the lease, avoid the consequences of the Act?

Mr. Hall: That would be good argument, your Honor.

The Court: I am merely asking the question. After all, I am interpreting a statute which represents the policy of the government of the United States, and which has been on the statute books for over fifty years. I think, to be exact, fifty-eight years. It was enacted in 1890.

Mr. Hall: And has never yet been applied to leases of real estate, whether they contain contractual provisions, or otherwise.

The Court: It is the instrument by which you are governed. But it says "contract and undertaking." A lease deals ordinarily not with the type or the source of goods to be sold. Leases usually deal with the tenure of land, with the kind of business to be conducted thereon.

Mr. Hall: That is it exactly, with the use of the property.

[fol. 2182] The Court: What was that?

Mr. Hall: With the use of the property.

The Court: With the use of the property, but if it also contains an undertaking relating to the source of goods which are to be stored there and handled there, then it is a contract or undertaking despite the fact that it is put into a lease. In other words, the duty of statutory interpretation and the duty of interpretation of documents calls upon us to determine its character from what it contains, not from what people call it. That is the rule in California, and elsewhere. That is why we can turn a deed into a mortgage. We can hold what purports to be a sale, an outright sale, when it was intended merely as security, and the like, because we go, not by the name which you give to an instrument, but what is in it.

Mr. Hall: But here Section 3 refers to a lease of goods.

The Court: That is right.

Mr. Hall: If they had intended a clause in a real estate lease to be within the Act, why didn't they add to the words "of goods" "or real estate." They have expressly mentioned what kind of lease, a lease of personal property.

The Court: I had here a copy of that statute. What did I do with it?

[fol. 2183] Mr. Hall: They have expressly excluded from the term "lease" anything with respect to a lease of real property.

The Court: I saw the point you are making in the brief. I have my copy of it, but I don't know where I placed it for the moment. I keep sending books back and forth.

Mr. Hall: In conclusion, your Honor, I would like to read a very brief passage from the opinion by Judge Learned Hand in the Associated Press case in the lower court, the three-judge court. It is reported in 52 Fed. Supp. 362, at 368, and this was the opinion which was affirmed by the Supreme Court in the decision that your Honor referred to this morning. Judge Hand says,——

The Court: From what page are you reading?

Mr. Hall: Page 368.

> "* * * However, as everyone now agrees, since the decisions of the Supreme Court in *Standard Oil Co.* v. *U. S.* . . . and *American Tobacco Co.* v. *U. S.* . . ., restriction alone is not enough to stamp a combination as illegal; it must be 'unreasonable' in the sense

that the common law understood that word: and that never has been, and indeed in the nature of things never can be, defined in general terms. Courts must proceed step by step, applying retroactively the standard proper for each situation as it comes up, just as [fol. 2184] they do in the case of negligence, reasonable notice, and the like. As good a statement as any of the common law upon the subject is that in the Restatement of Torts . . .: 'Decision in each case depends upon a comparative appraisal of the values of the object sought to be accomplished by the actors' conduct, the effects of such conduct and of the object on competition and on business enterprise, and the opposing interests of the actors in freedom of action and of the person harmed in freedom of opportunity to do business.' Again 'self-interest particularly a purpose to advance the business interest of the actors, may be a justification even though the harm caused by the refusal' (to deal) 'is intended to be the means of advancing that interest.'"

The Court: All right, Mr. Dixon.

Closing Argument on Behalf of Plaintiff

Mr. Dixon: May it please the court: We have now come to the end of this law suit, and I will endeavor to make my remarks rather brief because I believe that the issues in this case are now clearly in focus, and that the Court, as a result of the argument of counsel, clearly has the contentions and the positions of both the government and the defendants before it for its consideration. As a Sherman Act case, I think I should say, although your Honor is, of [fol. 2185] course, thoroughly familiar with it, the fact is that our country is the only country in the world that has an Act of this character.

The Court: I think I referred to that fact myself.

Mr. Dixon: Yes, your Honor did.

The Court: And I said the others have allowed combinations and sought to control them.

Mr. Dixon: The purpose of it, of course, is to maintain and to protect our system of a free economy which, if it is to continue to stand, must have any unreasonable restraints on competition removed, where they are found to exist by the court.

Now, the purpose of this law suit, as was indicated in the complaint, is to free what we feel, that is, the government feels, is a substantial, an appreciable segment of a substantial market in the seven western states in petroleum products and automotive accessories; by that latter term meaning tires, tubes and batteries, and miscellaneous automotive accessories.

The record here shows that the commerce involved here amounts in dollar volume to approximately $68,000,000 for the last year, namely, the year 1947.

The purpose in this law suit is not, as counsel for the defendants has suggested, to tie up or to socialize any segment of the great petroleum industry, which is one of the basic [fol. 2186] industries of our country. The purpose of this suit is not to necessarily have each dealer carry the fifty brands of competing oils that counsel has suggested are sold in the western area. That is not the purpose of this suit at all. The relationship here between the dealer and the defendants is not that of employer and employee. If it were, we would not be here; at least, not on this theory of a case of a violation of the Sherman and Clayton Acts.

The relationship involved here between the dealers and the defendants is that of a buyer and seller of the products that the government contends are subject to the restraints under the Sherman and the Clayton Acts, and all the government is asking this court to do under the complaint is to remove those restraints which tie up $68,000,000 worth of commerce in the seven western states, which, in effect,—and I say that these facts are not in dispute—which, in effect, give the Standard Oil Company a monopoly upon that commerce at those outlets.

We are not charging the defendants here with a monopoly of any part of the petroleum or automotive accessory business in the western area at all, as is suggested by counsel. We charge that by these contracts, which they have entered into with these some 6,000 dealers, all competition has been removed from a substantial interstate market, and that the [fol. 2187] result of that has been to give to Standard a monopoly of that particular market, but not a monopoly, in any sense of the term, of all of the petroleum business or all of the automotive accessory business in the Western Area.

Now, what we are, therefore, asking of this court is to remove these restraints on the 6,000 dealers, to permit them to buy and to permit the manufacturers of products competitive to Standard to sell, if they can, in a free and competitive market their products to these 6,000 dealers. In other words, if any one of these dealers wants to handle 50 brands of oil, then they should have the privilege to do so. The government is not concerned with whether he does or does not. The public interest is only concerned with the question of whether he has that right to do so in a competitive market, if he cares to do so, and that is the only thing that the government says is involved in this suit. That is not socialism. That is merely maintaining our system of free enterprise, which is based, and if it is to stand, must have competition within an industry, unless it is to become a monopolized industry. Now, the restraint here is direct. It is not indirect. It operates directly on every one of the dealers that are subject to these contracts, and it also operates directly to prevent all of the manufacturers of the competing products to sell their products, or, at least, to have an opportunity to sell them in a competitive market [fol. 2188] to the dealers so restricted.

The question has been raised that the government is perhaps guilty of laches here. I think your Honor is familiar with the recent decision of the Supreme Court in the Cement case. For years the Cement companies in the country have been using the basing point system of determining prices, which had, in effect, completely eliminated competition. The decision the other day declared that practice, which the cement companies have been engaged in for years, is illegal in violation of the Federal Trade Commission Acts.

Now, the government has no scheme here. There is no design in this law suit other than to accomplish the purpose that I have suggested, which we submit is in line with the purposes and objects of the Sherman and Clayton Acts, which are the basis of our free, competitive economy and is the backbone of our whole industrial growth on a sound basis in this country today.

I just want to deal briefly with a few of the other comments made by counsel. They say that open accounts are not involved in this case. We submit and suggest that they

are. The negative restraints operating on these open accounts are such that, according to the undisputed evidence, they will not sell those stations on a split pump basis. In other words, once they begin to buy, that operator cannot [fol. 2189] buy any other competitive products and still get the Standard Oil gasoline, a clear restriction and a tie-in provision; and the testimony shows that they start from the open account, and the purpose is to move them into the dealer category, and ultimately into the TBA setup, which is a 100 per cent tie-up with all the Standard products.

Reference has been made here to the Yellow Cab case. I think your Honor undoubtedly by this time is thoroughly familiar with that case, but I want to just point out one thing that I believe counsel has overlooked in referring to that case. He says that that was a case of a monopoly of a market. Now, we suggest that that was not a case of a monopoly at all. No monopoly was charged in the Yellow Cab case. It was an action under section 1 and section 2 of the Sherman Act, under section 1 the charge being that they had engaged in a conspiracy to unreasonably restrain the interstate trade and commerce in the purchase and sale of taxicabs in the cities of Chicago, New York, Pittsburgh and Minneapolis, and the opinion shows that in those cities this business involved 86 per cent of the Chicago market, 15 per cent of the New York market, 100 per cent of the Pittsburgh market and 58 per cent of the Minneapolis market. I think that where counsel is confused is on the third part of the opinion in that case, where the petitioner had charged the defendants with having engaged in a conspiracy to mo- [fol. 2190] nopolize the taxicab business as such, that is, the business of transporting for hire in the city of Chicago, and the court said that insofar as the complaints in the Yellow Cab case was concerned, on that phase of the complaint it was improper. So we suggest that there wasn't any monopoly involved at all in the Yellow Cab case, and that the record and opinion in the case shows there was no such charge even made, certainly not under section 1 of the Act, which involves only a charge of an unreasonable restraint of trade and commerce.

When this case was filed, your Honor, the only case directly on the point of exclusion of business from a substantial market was the Fashion Guild case. After this case was filed, the two decisions that have been so much dis-

cussed in this case were handed down by the Supreme Court, namely, the decision in the Yellow Cab case, and the decision in the International Salt case. In both of those cases, if we follow them through, particularly the latter, the Salt case, we find particularly in the decision of the lower court that Judge Rifkind refers to many of the cases referred to by the defendants, particularly, the Pick case and the Sinclair case, and those cases are described and the limitations that have been put upon them by the subsequent decisions of the Supreme Court are referred to in Judge Rifkind's opinion in the District Court.

[fol. 2191] But he didn't disregard them, he didn't put his decision in the District Court on that basis; that is, that they were illegal per se solely because of those decisions. He preferred, as the opinion indicates, to put them on the other ground, that they were an unreasonable restraint and not per se, and were violations of the Clayton Act as such. But when the case went to the Supreme Court, where the same and substantially similar arguments were made, the Supreme Court in the Salt case clearly held that on the undisputed facts and the motion for summary judgment, that there was a violation per se on those facts. That case, we submit, is directly applicable here. In fact, our case is, as we have suggested an a fortiori case, because here, instead of having only a half a million dollars worth of commerce involving an appreciable segment of the market, under the new doctrine announced by the Supreme Court, or at least as clarified, we have here involved $68,000,000 worth of commerce, and if that does not constitute a substantial interstate market, then I say the decision in the Salt case, and the decision in the Yellow Cab case holding that the sale and purchase of 5,000 cabs in four cities constituted an appreciable segment of an interstate market has no meaning and that the language of the Supreme Court just does not mean what it says in those two cases.

The defendants further argue and say: Does the govern-[fol. 2192] ment want to control the dealers in this case? Of course not. By that, they say, can't Standard turn around and require or sell the dealers on a requirements basis of 2,000 gallons a month? Will that be illegal, they ask us. In reply to that, I say it might be, if the facts show that the Standard Oil Company with-

out taking any requirements of the dealer into effect, went out and required every dealer to purchase a minimum of 2,000 gallons of gasoline per month, and said nothing more, and that that was the standard type of contract they used in selling or in tying up their stations. Then I say that type of contract, too, might be illegal.

I think your Honor has put his finger directly upon the answer to that question in the discussion that you had concerning the matter, as to whether it is a complete foreclosure of the market or whether it is merely, in and of itself a requirements contract which does nothing more than that and which does not have the effect—and that is the thing we are concerned with under the Sherman Act and the Clayton Act—of completely foreclosing all competition for that particular business.

The undisputed facts here, as I have suggested, clearly show the amount of commerce here in the seven states to be substantial, and those facts are unchallenged. The various cases relied upon and referred to by counsel in the argu- [fol. 2193] ment are, practically all of them, referred to in our reply brief, so I am not going to take time to discuss them here, except that I do want again to refer to the Bausch & Lomb case, which was mentioned by counsel. That is another of Judge Rifkind's opinions, the same judge who wrote the opinion in the International Salt case, and the same judge who wrote the opinions in many other antitrust cases. The footnote in the Bausch & Lomb case in the Supreme Court shows the exclusive dealing type of contract among dealers and wholesalers had been declared illegal by the Federal Trade Commission. That is footnote 2 on page 717 of the opinion, in 322 U. S.

Now, the restraint involved here, as we have suggested, your Honor, is not only a restraint on a dealer. They said and argued the restraint cannot be a violation of the Clayton Act because it only operates at a given spot, that is, a given outlet.

Well, you have some, or, at least 6,000 outlets that are involved in this case, and when you total them all up you have some 68 millions of dollars worth of business that we contend is restrained by the restraint, and which I again suggest is not alone on the dealer. It is on the competitor of Standard Oil Company, who wants to sell that dealer

products that Standard Oil sells him exclusively. The restraint operates in two ways.

[fol. 2194] The Sinclair case, which is also referred to in their argument, and which is referred to in Judge Rifkind's opinion, and which, on its facts, is clearly distinguishable from the facts involved in this case, was a case where the dealer could handle other products, if he wanted to, at his station. So, clearly, it is not authority for the proposition that we are urging is applicable in this case.

Now, they seem to constantly confuse the market we are talking about here. They say there is no substantial lessening of competition here, because Standard has only 10 or 12, or whatever per cent it is they have, of the total petroleum or gasoline business in the Western Area, and they say other companies are in competition with Standard. Again, we say that that is not the market we are talking about, your Honor. The market that is restrained here is the dealer market. It is this $68,000,000 market. It is not the billion-dollar oil market in the seven western states that is directly involved in this case at all.

They say that in the Salt case the defendant had a monopoly, and, therefore, since Standard doesn't have a monopoly of the petroleum business, the International Salt case is not applicable. It is true that there was a patent involved in the Salt case, and a patent, of course, once it is valid, gives the holder thereof a monopoly of the use of the patent within the limits of the grant given under the patent.

[fol. 2195] But in the Salt case there was not any monopoly of that kind involved. The thing that was involved in the Salt case—and we come back to that again, and it was only because the defendants have mentioned it in this capacity so many different ways—is that the restraint was on the commodity of salt, your Honor. That was the commodity that was restrained in the International Salt case, and they had endeavored to restrain it by making the patentees or licensees of one of their patented devices buy all of their salt, if International could supply it, from International itself. The restraint therefore was on the salt market and that was the commodity restrained, and the patent was wholly immaterial.

And, as we have previously suggested, the patent cases illustrate one type of an effort to restrain a market by an

illegal tie-in of it with the purchase of unpatented commodities. When you give persons a license or a patent, of course that is illegal, there isn't any dispute about it.

But that is not our situation here, and I again point that it is the restraint we are dealing with, and the restraint in the Salt case was restraint on the salt market, and the restraint here is the restraint on this $68,000,000 market in petroleum products and automotive accessories in the seven western areas.

And they say in the conclusion that Government's position here is absurd. They say if the court does what the [fol. 2196] Government asks in this case that many contracts will be declared void and illegal.

We are dealing only with this case, your Honor, and in its context. It might well be that there may be other violations of law, too, but we will come to those in due course. We are dealing here in this case with violations, at least which the Government contends are violations, of some 6,000 contracts in the seven western states, involving, as I have suggested many times before, $68,000,000 worth of commerce.

The effect of the contracts was gone into. They said that is a question of fact. Of course, it might well be, but the facts here as to the effects of this contract, we submit, are not in dispute. The facts are here clear and on the test of those facts, as coming clearly within the facts of the International Salt case, we submit that there is a violation per se in the use of all of these contracts on the basis and to the extent to which they have been put to use in this case, because in their effect they have operated to exclude all competition from this substantial market.

They say Standard has competition. I believe I have mentioned that they say there are a lot of other companies engaged in this business. That is undoubtedly true, your Honor. We do not know how many of them there are. There are numerous companies. We do not know, also, how [fol. 2197] many of them have endeavored to get into this business and may have fallen by the wayside. Those are not facts before this court and they cannot be material if they were before the court.

But the important thing here under the Clayton Act is to show the extent to which this business of Standard has been increased. I mean the business which we contend is subject

to the restraint charged here. The record shows that in 11 years the business has been practically doubled. In other words, from 169,000,000 gallons in 1936 to 320,000,000 gallons of gasoline in 1947.

Now, if that does not show an appreciable increase in this market which has come, we contend, as a result of the use of these contracts, and which, if continued, may very well tend, and even does now tend, to create a monopoly, if not restraint.

We submit that the undisputed evidence in this case shows that already in the period of 11 years in the petroleum business, alone, the defendants have in this market—I am not talking about any other market; I am talking about this dealer market—have practically doubled their business.

They have referred to some charts that are in evidence. Again, I want to point out the fact to your Honor that the fallacy of those charts is that they do not show—I think the record clearly shows this—how much gasoline was sold [fol. 2198] by other companies through retail outlets. We contended at the time they were submitted that they were not material and we still so contend; and if they are, if your Honor feels that they may be of any assistance in any way to your Honor at arriving at a conclusion in this case, we merely wanted to point out, as we have previously done, that there are many factors involved in those charts and the making of them up themselves that, in our judgment, at least, they can be of little aid to the court in determining the ultimate issues in the lawsuit.

Another argument that we heard quite frequently was that the Government has not shown that the Standard Oil has preempted any area or any part of the area in the seven western states.

We submit again, that that argument is based upon a fallacy and completely ignores the issue that is really the issue in this lawsuit; for there, again, we contend the burden is not on the Government to show the Standard Oil has a monopoly in any part of this area of all of the petroleum products business.

There, again, I emphasize it perhaps to the point of reiterating it unduly, but nevertheless, since that seems to be the position of the defense—and I say that it is a fallacious one—I again suggest to your Honor that that is immaterial,

too, because what we are dealing with here is the dealer [fol. 2199] market and not the relative position of Standard Oil with reference to the entire market in petroleum products or any other type of commodities that are involved here. Such comparisons were not made and were not even referred to as being necessary or vital in either the Yellow Cab or the International Salt cases.

There, again, it came back to the point Standard has competition. But I want to point out that they have no competition to this dealer market. That is what we are talking about in this case. In other words, the 69 competitors, for example, for oil that they mention—and then, again, even at the risk of repeating the point—I say that those 69 competitors are the ones that are excluded from the privilege of competing for business here of the $69,000,000 or $68,000,000 volume in 1947 that is involved with the 6,000 dealers in the seven western states.

There was a lot said here, too, what their competitors do: that they use this same type of contract. Well, I do not need to suggest to your Honor that we believe that is no defense in any sense of the term. The fact that the other majors, so-called, as listed in the exhibits may be doing the same thing does not in any sense of the term justify, if true, the conduct here, if that conduct in and of itself is illegal per se, as we contend it is under the decisions of the Supreme Court.

[fol. 2200] However, the testimony of the defendants—I mean of the other majors—is, your Honor will recall, that they did not compete for this business at all. In other words, they restated again the objects. How can anyone compete for the business when the dealer is prevented from buying from any other source than through the defendants?

They say that we fail to show the total number of outlets through which the tires, tubes, and batteries were sold in the western area. Well, that is not a requirement on the Government in this type of case. The only requirement that we have, as we view it under the decisions, the recent decisions, certainly, in the Salt and Yellow Cab cases, is to show that an appreciable segment of the market is involved, and that is shown by showing a large number of outlets in interstate commerce and a substantial dollar volume of business.

On this interstate commerce question, there, again, we

have, I believe, fully covered it in our brief, our reply brief. But there is one case that I would like to direct your Honor's attention to that we do not cite: that is the case of *McComb v. Herlihy*, 161 Fed. (2d) 568.

The Court: What was that?

Mr. Dixon: 161 Fed. (2d) 568. That was a decision from the Fourth Circuit, decided late last year, and it is comparable in many respects to the situation which you may [fol. 2201] have if it is involved here. It was under the Fair Labor Standards Act, and employees of a warehouse that was engaged in purchasing and wholesale distribution of gasoline, oil, tires, batteries, and automobile supplies were contending that they were not engaged in interstate commerce under the Fair Labor Standards Act. And the court held in that case, basing its ruling on the Jacksonville Paper case—and I am going to mention some of those cases briefly in a moment because they do indicate, as your Honor has expressed in the opinions that you have written in previous anti-trust cases, the trend in intgrstate commerce cases and distinctions that have arisen due to the constantly developing of new methods of doing busines, as exemplified, for instance, by the decision in the Insurance case. That is National Underwriters case, decided by the Supreme Court a short time ago.

But this commerce question, they have argued that the California business can't possibly be involved in this case. Well, the fallacy of their contention, there, again, your Honor, is this: That they fail to meet our contention that by excluding all of the outlets in California from competition, that is, from manufacturers of competitive products in other states—and the testimony here shows that there are plenty of them that come in here and want to try to sell these California dealers, as well as the Washington dealers, [fol. 2202] as well as the Utah dealers and the dealers in every one of these seven states—they can't buy. And the effect—that is what we are talking about, as your Honor pointed out in the Grocery case—the effect of the local restraint, assuming for the purpose of argument that it is solely intra-state, is such here that all interstate competition for that market is excluded.

The principle that we are saying and urging be applied to this case is the same whether it is in intra-state only or

whether it is interstate, because the market here sold is one that is completely closed to all competition.

The effect of their argument is referred to on page 4 of our brief, and many other cases are referred to in our brief, and I am sure your Honor perhaps is already familiar with them.

The last point they made was about this lease proposition. I believe your Honor has clearly indicated what the answer to that position is. It is not what you call the document; it is what it contemplates or what it does that the law is concerned with. And Government's Exhibit 5 clearly excludes the party that has that situation from acquiring any petroleum products, by the terms of that agreement, whether you call it a lease or whatever it is. Of course, it gives a right to the land. To that extent it is a lease. But it is also a contract, and the contract contemplates a sale or provides for a sale on the conditions that [fol. 2203] they not engage in buying or competing with their competitors and is, under the Clayton Act, clearly illegal.

The last case they cited was the Anderson case, I believe, on interstate commerce. That decision was decided in 1898. We have progressed 50 years since that decision. Our methods of doing business interstate-wise and in every other manner have changed substantially since that decision. Ours is a progressive economy.

The Sherman law, to repeat, must keep up with changing industrial conditions. The purpose of the Sherman law is clear, and when you have commerce today on an integrated basis involving, as it does in this case, the purchase and sale of millions of dollars worth of commodities from and through the seven states in the western area, we submit that that clearly constitutes commerce, in commerce, and is not the effect on commerce theory clearly applied.

So what may be called the indirect restraint of yesterday may become and may be the direct restraint of today, depending upon the changing conditions in our whole industrial and competitive systems. That which was legal yesterday, by growth, in and of itself may be illegal today under the Sherman and Clayton Acts.

As I suggested at the very beginning of this argument and, I believe, of the case, if three or four or two of these [fol. 2204] contracts were in effect, it might very well be

that they would not be a violation of the Sherman Act or of the Clayton Act, either. But when you put them in their context, as you must view them in this case, involving over 6,000 outlets in seven western states for a total amount of over $68,000,000 worth of commerce, I say to your Honor that under any concept of commerce or of the law today, when you attempt to and in fact do exclude all competition from that kind of a market, that you have, under the decisions of our Supreme Court as recently announced in the Salt case and the Yellow Cab case, clearly violated both the Sherman and the Clayton Acts.

And on that basis we ask your Honor to find for the Government in this case and to issue the restraining orders asked for enjoining the defendants from enforcing these restrictive provisions on the dealers, and to in fact open up this tremendous market to free competition, the kind of competition contemplated when the Sherman Act and the Clayton Act were passed by our Congress.

The Court: Gentlemen, in a case like this I do not usually rule immediately. It has been a long case. I do not think Mr. Dixon has departed from the rules which we follow, namely, that the reply should not bring in any new matters. But, Mr. Hall, if you feel that there is anything Mr. Dixon has said that requires further comment, I will be glad to have you either point it out to me or point to any portion [fol. 2205] of your brief which you think answer any such point.

I have indicated I will study the case. I have studied many more cases which have not been cited which we have discussed during the course of this argument.

Mr. Hall: No, your Honor. There is plenty I disagree with, but I do not care to make any further argument.

STATEMENT BY THE COURT

The Court: All right. Gentlemen, before I submit the matter, I want to express to you the joy I have had in trying this case. Contrary to the ordinary assumption of the layman and some of the lawyers, a case that really interests judges is a case which challenges his experience and what knowledge he may have accumulated over the course of years. There are cases which make the life of a trial judge, which might at times not be bearable easily, worth while. In the course of years, especially after a long period on

the bench, we are inclined to become weary of the average routine which the work may mean, just as the average lawyer at times gets weary of the routine which the practice of law may arouse in many instances.

But it is the important cases like these which brighten the path of a judge. Because of their importance they invite a great responsibility. That responsibility cannot be fulfilled except with the cooperation of the attorneys who represent the litigants in the case. The thoroughness with which they prepare the case, the aid which they are in *in* placing before [fol. 2206] the court their theories of the law or of the facts are invaluable in arriving at the proper decision in any case, and much more in a case of this importance.

At times in a case which involves issues of this importance there is a tendency to become emotional and to indulge in personalities. Counsel sometimes do it consciously and unconsciously, carried away by their advocacy. I am happy to say that there has been no such incident in this case. Whenever these incidents happen, the judge, of necessity, feels affected, because you cannot sit in trial of a case in which a lot of emotionalism is brought in and a lot of feeling is expressed without consciously or unconsciously making yourself a vehicle of that, and it is not a pleasant task to try to arbitrate in a case with incidents of that character. I repeat that there have been no such incidents here.

Both sides have tried the case in accordance with the highest ideals of ethics that should prevail in the trial of these cases, and I am grateful to you for it.

I realize that we have kept very long hours, and the hours were made longer by the fact, of which I am conscious, that all of you had to spend additional hours in preparation. But that was brought about by the exigencies of the work, by the desire to complete it within the time we allotted our- [fol. 2207] selves, by the fact that my work is such that unless I try to put in a lot of time, with slight variations of a particular case, large litigants are discommoded.

You were present in court and were made aware of the fact that the case which is to follow is a case involving a lawsuit by an Argentine corporation; that members of that corporation and others who are to be witnesses have arrived from that country and have been here waiting for the trial. Had I not insisted on longer hours than is good for any of us so far as our health is concerned, because most

of us—I do not know Mr. Dixon's age, but I know Mr. Hall's age—most of us are reaching an age where these long hours begin to tell. Had I not insisted, I think we would have disorganized the balance of the other litigants whose cases I must hear between now and vacation time.

I assure you that I have worked alongside, although not in your presence. I was working in chambers on many of these matters. I would hate to admit how late I was in in chambers this morning. I have become about as well acquainted with all our night watchmen and all the janitors in the last four weeks as I have, with one or two exceptions, during the entire period that I have been on this bench.

I wish to thank you all for the spirit in which you conducted the case and the masterly manner in which you placed before the court the facts and the law as you interpret it.

[fol. 2208] Of necessity, whatever I do in the case is going to disappoint one side or another. A judge can never win a case. Lawyers only can win a case. And I try the case in a manner which is only 50 per cent right, because, for a while at least, the losing side fear the decision is wrong. Fortunately that is forgotten easily, although some members of the bar continue to harbor that feeling long after the case has reached finality and has run the gamut of the entire course of review. Fortunately our judicial system is based upon the proposition that there should be no finality to the judgment of any trial court, and that is one of the beauties of our system. For that reason there are probably more methods provided to review the decision of a trial judge or of a trier of facts, an administrative trier of facts, in this country than in any country in the world, not excluding England from whom the basic ideas of our system of jurisprudence stem.

I shall try to decide the matter as quickly as I can. Fortunately many of the cases which deal with the subject are familiar to me, having been in the fortunate position of having tried a large number of these cases and heard matters in many of them which I did not try outside of the district.

[fol. 2209] I even heard two antitrust matters in the State of Oregon, although I did not try the cases. But the problems involved in them were before me in 1942, when I sat there. And I also tried unfair trade practice cases, so

that makes my task easy, because when it comes to formulating my thoughts I can start from where the opinions I wrote in those cases left off, and deal only with such law as was not involved there or such new principles as the particular facts call for or which may have been promulgated in more recent cases.

You will receive due notice of the decision. I cannot tell at the present time what form the decision is going to take. I may call you all in and announce it in open court, or if I decide to handle it in the form of a written decision or opinion, which is my present inclination, I may notify you at the time it will be filed or may call you to be present when I file it.

Our custom here in this respect differs from the custom which is followed in some of the districts, including Nevada and Oregon, where the custom has grown up of announcing the decision in open court always, in the presence of the attorneys, even though the decision is written. I do not know how the practice grew up because it is not the practice in the State Courts. I think it developed merely out of the requirements under the old rules that requests for findings should be made at the conclusion of each case and that [fol. 2210] the decision of the court was the first indication that counsel had as to which set of findings had been approved.

In cases of importance I have at times notified counsel, and even when I had a written opinion, that I had filed it at a certain time, and at times I have even amplified it, when the matter was of such nature that either time did not permit a full exposition of the principles I covered, or I felt that counsel should have additional information to guide them in the preparation of findings. I did that in an oil case which arose last summer, in which, because of the pendency of an injunction in another district, it was necessary that the decision be made at a certain time, and while the decision was oral, I called in the attorneys and amplified what I had said.

At any rate, due notice will be given to you in advance, if that is my intention, and if, of course, the entire opinion and the decision are both written, you will be notified immediately by the clerk when it has been filed, and copies will be made available to you all. That includes the members of the press, some of whom are not regularly in the

court but are here merely because they represent publications which are especially interested in the principle involved in this litigation, which is so important to the oil industry and to the government and to the buying public.

[fol. 2211] While I am at it, I want to express my thanks to Mrs. Zellner and Mr. Bargion. Mrs. Zellner came in to pinch-hit, as it were, when our own reporter, Mr. Dewing, was taken ill. I know that with the requirements which a daily transcript imposes upon a reporter the task has not been an easy one, and I may say that such portions of the transcript as I have read show that all three, Mr. Dewing, Mr. Bargion, and Mrs. Zellner have done a very, very beautiful job of reporting, considering the variety of matters which have been brought before us in the testimony and the many spontaneous, but long arguments which have occurred during the trial.

With that the cause will stand submitted and the court will be adjourned.

[fol. 2211A-2212] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 2213] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

HONORABLE LEON R. YANKWICH, *Judge Presiding*

Civil Action No. 6159-Y

UNITED STATES OF AMERICA, Plaintiff

vs.

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., Defendants

Reporter's Transcript of Proceedings

Los Angeles, California
June 28, 1948

Appearances:

For the Plaintiff: WILLIAM C. DIXON, Special Assistant to the Attorney General
LAWRENCE W. SOMERVILLE, Special Attorney Antitrust Division
THEODORE DRISCOLL, Esq.

For the Defendants: LAWLER, FELIX & HALL, By: JOHN M. HALL, Esq.
EVERETT A. MATHEWS, Esq.

[fol. 2214] Los Angeles, California, Monday, June 28, 1948, 3:00 P. M.

The Court: All right, gentlemen.

The Clerk: Case No. 6159-Y, *United States* versus *Standard Oil Company of California and Standard Stations, Inc.*

COLLOQUY RE OBJECTIONS AND AMENDMENTS TO DECREE

The Court: All right, gentlemen. I think the best way is to take up the findings as to which there are any objections, and I will hear what you have to say all along the line.

Mr. Hall: May we start with the decree, your Honor? I have handed to the clerk certain objections and amendments to the decree and served copies on counsel. During

the last half hour or more Mr. Dixon, I think, has been looking over those. Are those before your Honor?

The Court: Yes, I have them.

Mr. Hall: No. 1 Mr. Dixon says is not objectionable to him.

Is that correct, Mr. Dixon?

Mr. Dixon: That's right.

Mr. Hall: No. 2, Mr. Dixon says is not objectionable to him.

Mr. Dixon: That is correct.

The Court: All right.

Mr. Hall: No. 3 is not objectionable to Mr. Dixon if after [fol. 2215] the word "existing" in the third line are inserted the words "written or oral".

The Court: "with whom a defendant then has existing written or oral contractual relations"?

Mr. Hall: Yes.

The Court: All right.

Mr. Hall: Coming to No. 4, Mr. Dixon says that he has no objection to that amendment down to line 25, beginning with the words "provided however". That is on page 2, your Honor.

Mr. Dixon: May I interrupt just a moment and say that that is on the understanding, your Honor, that that is what your Honor intended in your opinion.

The Court: That is all right.

Mr. Hall: Inviting attention to the last six lines on page 2, beginning with the words "provided however," and the balance of that amendment, that is inserted to take care of a situation that was exhibited in the testimony, your Honor, a situation of aggressive and strong competition.

There is precedent for that kind of a provision in the decree.

In the decree which was made in United States against Chrysler Corporation in 1938, there your Honor will recall there was a criminal and civil suit against the General Motors involving the Acceptance Corporation, which was a [fol. 2216] subsidiary of General Motors. I am sure that Mr. Dixon will correct me if my facts are in error, but as I understand the situation the other large competitors of General Motors also had finance companies, and in the case of Chrysler a decree was made against Chrysler which contained this provision:

"If an effective final order or decree not subject to further review shall not have been entered on or before January 1, 1943 requiring General Motors Corporation permanently to divest itself of all ownership and control of General Motors Acceptance Corporation, and of all interest therein, then and in that event nothing in this decree shall preclude the manufacturer from acquiring and retaining ownership of and/or control over or interest in any finance company, or from dealing with such finance company, and with the dealers in the manner provided in the decree, or in any order of modification."

That was put in for this purpose—a purpose which we find an exact counterpart or analogy in our case—to prevent irreparable injustice from competitors carrying on the same practices that we are enjoined from pursuing.

If that were not done, of course, the result would be inequitable and our competitors would step in and by prac- [fol. 2317] tices which have already been exhibited in the testimony would take over our distribution outlets and our dealers, and that is the purpose of this further provision in Paragraph IX.

The Court: Let me ask you this: Were there similar actions pending against the others at the time?

Mr. Hall: Yes.

The Court: There are no similar actions pending here.

Mr. Hall: I am reading you from the Chrysler opinion, the Chrysler decree.

The Court: I understand that. But was that decree predicated upon the proposition that similar action was actually pending against the competitors?

Mr. Hall: Yes. The part that I read you made the relief against Chrysler dependent upon a decree being entered against the General Motors, and there was a pending action against General Motors.

The Court: But there is no showing that actions are pending against these defendants.

Furthermore, as you will notice from the letter, correspondence between Mr. Avery and me, copies of which you have received, while they appeared as witnesses they are now contending, at least the Texas Company is, that their contracts are not similar, and that they don't come within

it. They wanted me to modify the statement. I received [fol. 2218] the letter.

I will hear from Mr. Dixon.

Unless there were actual proceedings pending against the others, I do not think we should tie this proceeding to a similar proceeding which has not yet been commenced, and which may not be necessary to commence.

Mr. Hall: The inequities are just as great whether the other proceedings are pending or not.

The Court: If this judgment becomes final those people are put on notice that at any time similar proceedings may be instituted against them, and I do not think we should tie a decree to something that the government might do. The government might change its policy and not do anything, and I should not control the future policy of the government by this case.

Mr. Hall: That is just the inequity of the situation. If the government changes its policy and does nothing——

The Court: I am not responsible for the policy of the government. I merely decide cases that the government brings before me.

In other words, you are asking me to say that this decree should not have effect unless the government does to all others what it does to you.

Mr. Hall: That is right, in the major portion of the order.

[fol. 2219] The Court: Even if the government agreed, I would not agree to that.

If there were other cases pending and there was danger that they were not pursued to judgment, then I might be inclined to do it. But as there are no other cases pending against others, I do not think we should tie this to any decree, because I have no authority to tell the government here, "Unless you bring all of them in I won't do it."

Mr. Hall: All right, your Honor. There is one other case pending, and that is against the Richfield Corporation.

Perhaps you have the number of that, Mr. Dixon. Will you, at least, confirm that statement?

Mr. Dixon: If we are going to discuss the other case, I am perfectly happy to do so. It is a comparable case. The factual situation is somewhat different, in substance, from the facts presented to your Honor in this case, and we feel,

as your Honor has indicated, that the hands of the government should not be tied by a provision of this character.

In other words, the first portion of the suggested substitution gives to the defendants in this case, at least, assuming this case is appealed, a period from a year to a year and a half before this decree shall, in effect, become final. [fol. 2220] Certainly I think that is sufficient protection to the defendants in this case.

In the cases mentioned, the Chrysler case, and the Ford case, the facts were exactly the same. In other words, both companies were using finance companies exclusively for financing their cars. Which is not the substance of the case we have here with reference to Richfield.

Although there are many similarities between the facts of the Richfield case and the facts in this case, no court has as yet passed upon them or the evidence in the Richfield case.

The Court: All right. Let's go to the next one. I will not tie in that provision. I have provided in the decree ample time.

I did it in another case and it worked out. I think that is a fair provision, and we should not tie it to a judgment in any other case.

Mr. Hall: Then the proposed amendment will be allowed down to the words "provided however," is that correct, your Honor? I have already stated, your Honor, down to there it was agreeable to the government.

The Court: I intended that to go in. I didn't notice that he didn't put that in. I made that a separate order. Yes, that should go in.

Mr. Hall: Then coming to Amendment No. 5, that has [fol. 2221] reference to Paragraph X of the Judgment and is a provision for enforcement that has its counterpart, or nearly its counterpart in some other decrees. I have provided in the alternative, your Honor.

The first provision in my proposed amendment is a provision which we believe entirely sufficient for the protection of the government, and at the same time for the protection of the defendants against unreasonable——

The Court: What change are you introducing into the paragraph?

Mr. Hall: Are you looking at the first part of my amendment, your Honor?

The Court: Yes.

Mr. Hall: The first part, in substance, provides that if the government wants specific information they ask for that information, and if the information is not forthcoming then the government can go to the court and upon a specific showing of the facts obtain an order to that effect.

The Court: Doesn't that say on reasonable notice to either of those defendants?

Mr. Hall: Yes, but——

The Court: Just a minute. Let me read this. Doesn't it follow, as a matter of course, Mr. Hall, that if those requests are not granted, that the application would have to be made to the court either by citation for contempt or [fol. 2222] some other manner to compel performance?

Mr. Hall: We don't want to be in contempt of the decree, your Honor.

The Court: Pardon me?

Mr. Hall: We don't want to be in contempt of the decree.

The Court: This provides for a written notice. Why decide in advance what should be the effect? The government should have the right to pursue whatever legal remedy they want to if you do not comply. Leave it up in the air without deciding what they are going to do.

Mr. Hall: Here is the difference between what the government proposes and what we propose: the government proposes upon reasonable access to simply step in and have access to these books, ledgers, accounts, correspondence, and memoranda, or interview corporate officers. If we say, "No, we don't think you are entitled to look at these particular books or memoranda, no we don't think you are entitled to talk to these particular corporate employees," then the government steps in and seeks to cite us for contempt of the decree.

Under the provision that we have proposed, the government makes a request, specific request as to what it wants to examine, as to the information that it wants. It comes to us and makes that request, and it is only if we refuse [fol. 2223] the request that they then go to the court and ask for further instructions.

The Court: I think your second alternative, which modifies the words, appeals to me more than the other. It places a reasonableness there without determining in advance what the government is to do.

What do you say, Mr. Dixon?

Mr. Dixon: We have no objections to a modification of Point 3 of line 25 of Paragraph X to include the words "concerning matters directly related to compliance with this judgment" as a proposed insertion.

With reference to 1 and 2, we might say that those provisions—as is also 3, incidentally—are standard provisions in antitrust decrees. 1 and 2 were sustained as to form by the Supreme Court in the Bausch and Lomb case where they were attacked by the defendants in that case as being unreasonable and in violation of their constitutional rights, unreasonable search and seizure, and so forth. The court did say that the third form was too indefinite to be enforced. In other words, by making it specific it would be enforceable, clearly holding in the Bausch and Lomb opinion that the government was entitled to these things in order to determine whether or not the provisions of the decree were being lived up to, and the defendants were protected under this provision by making certain that any [fol. 2224] information thus secured would not be, of course, available to the public generally, and would be only used in legal proceedings by the government.

So that subject to that addition we feel that Paragraph X should stand as is with the insertion or suggested insertion which would meet the objection, or the possible objection to this form, although we feel it is adequate even in its present form as outlined in the Bausch and Lomb decree.

Mr. Hall: Before your Honor rules on that, I would like to be heard.

The Court: Go ahead.

Mr. Hall: This first insertion that we ask is on page 5, line 17.

The Court: I am inclined to grant you that entire alternative, Mr. Hall. There is no use to argue it.

What is the change that you are making? Let me see.

Mr. Hall: That was the thing that was disapproved in the Bausch and Lomb case.

Mr. Dixon: What is that?

Mr. Hall: The elimination of 3. That is required by the rule in the Bausch and Lomb case.

Mr. Dixon: Yes. As I said, your Honor, the objection to Paragraph 3 is to its not being specific enough, and we [fol. 2225] have no objection——

The Court: Then leave it out. That works both ways. You can leave noncompliance under 1 and 2 open to proof on their part that the request is not reasonable. All right. The alternative will be granted as to that one.

Mr. Hall: Do you mean the entire 5-A will be granted?

The Court: Yes, 5-A will be granted.

Just a minute until I make a note of this. All right.

Mr. Hall: I don't know that Mr. Dixon had any objection to XI. I simply want to add at the end of Paragraph XI, your Honor: "or for other or further relief."

The Court: Where is that?

Mr. Hall: End of Paragraph XI of the proposed Judgment.

The Court: That in a complaint is all right, before the court has limited the decree, but it seems to me in a decree it is nebulous. The court has no power after a Judgment has become final to do anything but make modifications of form. The court could not change the substance of that decree after it had become final.

Mr. Hall: That is what the court had in the Paramount case."

The Court: What meaning does it have?

Mr. Hall: It broadens the rather restrictive language that goes before.

Certainly if the court retains jurisdiction it retains juris- [fol. 2226] diction for all purposes, and that is simply the purpose of the words.

The Court: The Paramount decree had so many alternatives arising out of ownership. There was divestiture, and things like that.

This was eliminated from the case right at the beginning. When we started, I thought perhaps the government was seeking that here.

You can see what the court did if you read that entire series of cases. In some instances they held that the court hadn't gone far enough and sent the case back for the purpose of considering whether they ought not to be compelled to divest themselves of the theaters they already owned. The court had merely stated they should not buy any more.

But here the government is not seeking, and I have not granted anything except to declare that these provisions in the contract are invalid. So the retention of a power like

this is meaningless, because the scope of the decree is narrow.

Mr. Hall: Very well, your Honor.

The Court: That will be denied.

Mr. Hall: Coming to No. 7, I would like to call your Honor's attention to the evidence which is a predicate for this request.

[fol. 2227] The Court: Let me read it again before you start.

Mr. Hall: Yes, sir. And 8 might be read with it, too.

The Court: All right.

Mr. Hall: These provisions are requested, your Honor, because of the breadth of the decree, the generality of the decree, the generality of the enjoining paragraphs of the decree, which are 6 and 7. I call your Honor's attention to the Federal Statute which governs the framing of a decree of this kind, 28 USCA 383:

> "Every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained."

The company, as far as this decree is concerned, must plan ahead. It must have definite specifications to rely upon, not general language, and it is no answer, your Honor, to say that we can apply to the court under its retained jurisdiction power for permission to do this or that. The company has to know in advance what it is permitted to do before it incurs large expenditure.

Now, coming to Paragraph 8 of the proposed amendments.

[fol. 2228] Paragraph 7, rather, and Paragraph 8. Those are framed with the idea of protecting the company against imposition and fraud, and it has a basis in the testimony in this case.

Your Honor will recall that the first witness, Mr. McClanahan, testified in this way— am reading from page 126 of the record:

> "Experience has proven that they tend to misrepresent the products to the trade."

He is speaking of service station dealers.

> "Oftentimes they sell a gasoline out of one pump that the customer may think he is buying from another, creating what we call substitution. We have known of many instances where they have transferred the products from an underground tank to another tank, where it is sold under another brand, because of some temporary compensation that they might get from that particular supplier."

Again at page 138 of the record Mr. McClanahan said:

> "Mr. Dixon, we have had accounts, where we have had the trademark and the color in the pump, and the account has sold gasoline from that pump for six months, and we haven't delivered a gallon of gasoline to the dealer in six months, but the meters of that pump showed a tremendous output."

[fol. 2229] Testimony to like effect was brought out by Mr. Thompson when he was called as a part of our case.

The Court: Mr. Hall, I can see how a portion of 7 could be granted, but 8 is arranging your future relationship as to what you can do. How can we do anything that can bind or determine the rights that you have in the future? You are trying to establish certain rules and regulations which are beyond the scope of this court, because it affects the rights of others. The Chevron operators are not before this court.

Mr. Hall: No, your Honor; we are simply asking in 8, for example, that we have permission to do this under the decree. We want to say to a dealer that we don't want him to paint his station or sign-post his station in such a way as to mislead the public that Standard gasoline is being sold there when it isn't being sold there.

The Court: Paragraph A of 7 is all that you are entitled to. The rest of it is a question of legal rights for you to enforce.

Mr. Hall: I don't think so.

The Court: I can't tell in advance in this decree whether it should be at a certain distance and whether you have certain rights. These people are supposed to be independent operators.

Mr. Hall: We are not asking your Honor to adjudicate [fol. 2230] the rights of these dealers.

The Court: In this case I am declaring merely your rights, between the government and yourself. I cannot declare the rights between you and the others.

Mr. Hall: I understand that, and I understand the injunction runs against us.

The Court: These are all with relation to your future conduct here. I am inclined to allow that Paragraph 1, which is:

> "That any pump or tank or other container or receptacle furnished by defendant to an operator shall be used solely for the storing, handling or dispensing of defendant's petroleum products,"

and then add to that "and to make such reasonable regulations relating to the condition of such operation."

That is sufficient because it tells you that you have certain rights. But in advance to tell them that they can't paint and they can't do something else is to declare the rights you have against them, and they are not before the court.

Mr. Hall: I would like to take these one at a time. Your Honor spoke of 1. Do you mean A under 7?

The Court: Yes.

Mr. Hall: Certainly we have a right to B and C on this same theory. We are simply saying to your Honor we [fol. 2231] want the privilege of selling our products under these conditions, and they are fair conditions, and they are conditions that are necessary for us if we are not to be defrauded by practices which the evidence shows without contradiction have prevailed in the past. There is danger shown to the court that this will happen, and they are entirely fair provisions, and they are entirely within the statute, in that they permit us specifically to do certain things, as many of these decrees do.

Many of these decrees are framed with a heading "Acts permitted." And when a company is forced to change its entire distribution system, it wants to know. It doesn't want to be in contempt. It wants to know definitely and specifically and in detail what it may do, and these are things that no honest person could object to.

The Court: The difficulty is that these persons are not before the court.

Mr. Hall: Your Honor, will you look at the first part of 7?

> "Nothing contained in this judgment shall enjoin or restrain either defendant from selling or contracting to sell any products to service station or garage operators on any one or more of the following conditions:"

We simply want permission from the court that we may [fol. 2232] sell our products under these eminently fair conditions, that these conditions which will prevent substitution, fraud on us, and fraud on the public.

The Court: I don't think I can take it and fix it as to distance. That is a question of agreement.

I will grant you A.

Mr. Hall: We would like the privilege of going to the dealers and making the agreement if we can. If your Honor will look at the breadth of this decree we may be prevented from doing that without a contempt of this court.

The Court: I think you can say, "can be used solely for the purpose of dispensing defendant's gasoline," and put in there "and to prescribe by agreement regulations for such storing, handling and dispensing not inconsistent with this decree."

There you are. Then this is an exception that allows you to regulate the manner without my in advance fixing the distance at which it shall be, whether you should lock it, or something else.

Mr. Hall: Will your Honor read what you have? I was unable to follow it.

The Court: This will give you a flexible clause. Wait a minute now. Put a comma after the word "products" at the end of line 17, "and to prescribe by agreement regulations for such storing, handling and dispensing not incon- [fol. 2233] sistent with this decree."

Then you can make your agreement as to paint and everything else, which this decree doesn't control, or distances, so long as they don't have the exclusive features.

Mr. Hall: May I have that again?

The Court: Let me read the entire paragraph.

"Nothing contained in this judgment shall enjoin or restrain either defendant from selling or contracting to sell any products to service station or garage operators on the following condition:

"A. That any pump or tank or other container or receptacle furnished by defendant to an operator shall be used solely for the storing, handling or dispensing of defendant's petroleum products, and to prescribe by agreement regulations for such storing, handling and dispensing not inconsistent with this decree."

That is a statement that you insist that your tanks shall be used only for your gasoline, and you can bind the man by any reasonable precautions to observe that right, without in advance laying down any rules for distance, or the like.

What did you have to say? I am talking out loud, gentlemen. [fol. 2234] I am trying to find a common ground of agreement.

Mr. Hall: That covers the defendant's tanks, but C, of course, covers the installation of competing tanks so near defendant's tanks as to give opportunity for this substitution.

The Court: You can arrange that by agreement.

Mr. Hall: We can't under the clause your Honor has dictated.

The Court: You can do it under the clause. You will have a flexible clause, while here you bind yourself to a distance. I don't want to establish distance, in advance. I have not heard any evidence to enable me to know what distance would prevent fraud.

Mr. Hall: It doesn't look to me as if 16 feet would be a great distance.

The Court: I will hear from the government.

Mr. Dixon: The government objects to 7 and 8 and the succeeding suggested additions to this decree. As your Honor studies them, I believe your Honor will agree that they are an attempt to set up a code of regulations here, in a sense, whereby the defendants might sell their products, which have no application at all, in our opinion, in any sense of the term, to the provisions of this decree.

The government feels that not only this type of suggested [fol. 2235] addition, but the others, as well, have no place

whatever in this decree, because, for example, take the suggested C, which your Honor has already indicated he is not receptive to, that provision in and of itself would operate to completely exclude any other competitive tanks or facilities for storing competitive gasoline at any service station.

Your Honor knows, as a matter of judicial knowledge, when you go into a gasoline station that the pumps are frequently less than two feet apart. Now, this provision is an attempt to limit them within 40 feet of each other.

This whole thing, in our judgment—this talk about fraud on the public we do not concede is supported in any sense of the term by the record. As a matter of fact, our evidence, the evidence of the only operator testifying concerning the operation of a split pump, was to the contrary.

This type of an addition to the decree, which we submit is an attempt to set up a code here of commercial practices, telling what may be done and what may not be done, has no place in this type of a decree where the general purpose of the provision is merely to prevent the defendants from imposing conditions on dealers, present or future dealers, whereby they cannot deal in competitive products.

This provision, for instance, A, that they suggest, refers [fol. 2236] to receptacles furnished, to use the term there in quotation marks, by the defendant.

What is meant by "furnished"? Take a situation where the tanks are furnished and the pumps are furnished to a dealer, and he subsequently buys them, what is to happen? They are still furnished to the dealer, and yet they are the dealer's product through purchase. Are those pumps to still be used only for Standard Oil products?

The point, your Honor, I am making is this: That by inserting any one of these proposed provisions from 7 on your Honor will be attempting to pass in advance, we submit, on any question that may arise between the defendants and any proposed or present dealer concerning the legality of what the defendants are endeavoring to do by way of merchandising their product.

We say as to that: sufficient is the evil until the day thereof.

If it becomes that under this decree certain practices are resorted to, or are being resorted to by the defendants, which in effect have the same effect as that which the evidence shows to have been the result of the conditions here,

then the government wants to be able to come in here and say that on that showing the defendants are in contempt of the provisions of this decree, and it is not the policy, of course, of the government to summarily haul any defend- [fol. 2237] ant in these cases into court until the government is satisfied that there has been a violation of the decree and the defendants given an opportunity, after having it directed to their attention, to correct that, unless it is a deliberate and intentional violation of the decree.

The Court: Let me ask you this. In A if we have the words "by defendant and marked as such," then I see no objection to saying that a man who has a Standard gasoline pump and has it marked as such shall use it only for Standard gasoline, which means if he buys it and he wants to change it would be all right.

I think to that extent there can be no harm in giving them that right, without setting down details.

I have already stated that I don't believe the other should be granted, nor do I believe that I should pass at the present time on the question whether an agreement to buy the maximum that they need is or is not without the decree.

I put that in the opinion merely as a question of argument, and I said even then there would be an opportunity of a man dealing. But I do not think that I ought to in advance determine that.

Another reason is that it is already apparent from the correspondence which I have filed in the case that other companies are practicing that, and they are beginning to [fol. 2238] maintain that they are or are not within the decree. I told them so far as the opinion is concerned, both of you have the letters, I merely drew the inference that was warranted, that they were here to assist Standard, and it was offered to show similarity, not dissimilarity.

I don't want to say in advance where there would be a violation. That is not the object of the decree.

By adding the word "and marked as such" means so long as it is marked Standard gasoline he is not to use it to palm off somebody else's gasoline.

I think that is legitimate, and the rest of them can be covered by any agreements to be determined later on.

Mr. Hall: If your Honor please, may I say just one more word on that? That, as your Honor points out, may protect the pumps of Standard Oil Company, but contrary to

what counsel has just stated, let me read the undisputed evidence in this case of Mr. Thompson (Page 1547):

"Q. Now, tell us just what it is that, in your experience, you have found that a dealer would do in the way of substituting one gasoline for another at a service station, how he would accomplish it?

"A. Well, the pumps generally would be on a single pump block, and the customer attracted to the station—if our colors and signs were displayed, a customer desiring our products would be attracted to the station, and in pulling up to the pump block would nat- [fol. 2239] urally expect to receive the product that was generally identified in that unit, and it was very easy for the dealer to take the hose from some other pump, and without being observed by the motorist put the gasoline in the tank.

"Q. Was there a practice in that connection that is known in the parlance of the trade as 'long-hosing'?

"A. Long-hosing is——"

The Court: I remember that.

Mr. Hall: That is all we are trying to do is to prevent long-hosing.

The Court: There is a limit as to what the decree should do. In other words, if I put that in, then it merely says that you have a right to regulate it.

This does not say you haven't the right to cease dealing with a man except upon terms that are agreeable to you. This is not a mandatory injunction ordering you to do anything. This is an order to cease and desist from certain practices, that is all this is.

Gentlemen, I have had a very long day. I will give you all the time you need. I think Mr. Goldstein is pretty tired out, as I have been on the bench with very few interruptions since 10:00 o'clock this morning. Also, I have to try another case tomorrow. I want to save time. I have given [fol. 2240] you an opportunity to express yourself.

Mr. Hall: May I pass on to No. 9, then, your Honor?

The Court: I will grant that first part of 7, as I have changed it.

Mr. Dixon: May we have the language, your Honor?

The Court: I merely strike out the words "anyone or more of" on lines 13 and 14, and then strike the "s" and

make it so it will read "on the following condition:" you don't even have to put in "A." It is only 1.

It will read "furnished by defendant and marked as such," and then continue with the phrase. And then at the end where it says "products" there will be a comma, and then say "and to prescribe by agreement regulations for such storing, handling and disposing of such products not inconsistent with this decree."

I don't think 9, either directly or in the alternative has any place in the decree. This, again, is telling you what you can do about the credits and about painting, and all sorts of things which are regulatory of your agreement with others.

There is nothing to prevent you from saying here, "I am going to do it upon this basis, otherwise I will not deal with you."

This man isn't before me to compel you to deal with him. I don't want to establish in advance the conditions under [fol. 2241] which you can deal. These are just as foreign to the decree as the ones I rejected in a portion of 7 and 8.

Mr. Hall: May we have a general paragraph stating that we may refuse to deal with a customer for any reason we think best?

The Court: You have that right. I don't need to give it to you.

Mr. Hall: I am not certain whether we have it under the decree, or not. I don't want to advise the company to proceed in a way that will be in contempt of court.

The Court: This says: * * * from inducing or compelling, or attempting to induce or compel, by any means whatever any independent dealer to enter into any contract which requires (a) and (b).

All it does is prevent you from doing that.

I think those that I have granted are all I care to grant, without making the decree complex.

Mr. Hall: Without arguing, your Honor, may I direct your attention to page 7, No. C? That is just about what your Honor stated we are permitted to do. May we not have that included?

The Court: Which is that?

Mr. Hall: "From freely selecting the service station or garage operators to whom it will sell or contract to sell any of its petroleum products or sponsored products, or from

[fol. 2242] declining or refusing to * * *" that is C on page 7.

The Court: That can go in provided you put in an exception. "providing such failure to refuse is not grounded upon refusal to condition such dealing upon the contracts prohibited by this decree."

If you want it that way, I have no objection to it.

Mr. Hall: Will your Honor read that again?

The Court: "providing such refusal to deal on the part of the defendants is not based upon the refusal of the dealers to accept conditions prohibited by this decree."

With that modification you may have subdivision C of 9.

Mr. Hall: That looks as if it threw it right back into the broad ambiguity which now appears in the decree.

The Court: No. The decree is a simple decree. We have just certain specific contracts, and the decree must be understood in the light of the findings, and the contracts are referred to in the findings.

All right.

Mr. Hall: I would like your Honor to give some attention to Paragraph 10. That is as to preservation of normal landlord and tenant relationship. In cases where the company owns the fee title, where the company is the lessee from a lessor other than the operator, certainly there is nothing in the law or nothing in your Honor's ruling which [fol. 2243] should prevent protective provisions in leases with reference to alterations, additions or changes with respect to improvements.

The Court: There is nothing that is in the way. I am not interfering with the rights you have as a landlord, or the holder of what we used to call in war contracts the prime lease.

Mr. Hall: I am glad to hear your Honor say that, because when your Honor signs this decree that perhaps will enlighten us, but as the decree stands, its breadth and generality is not such as to give us any assurance that we can do those things.

The Court: We are not depriving you of a property right or any contractual right that you have.

Mr. Hall: Then what is the possible objection to including it in the decree?

Mr. Dixon: We have the same objection, your Honor, to this as we had to the other provisions. We feel that it may

be misconstrued by the dealers here who are subject to these contracts, and we don't think it is in any sense necessary to the carrying out of the provisions of this decree.

On the other hand, it is possible, although we are frank to say we know of no situations at this time, where provisions in the lease might be used for purposes of violation of the decree.

[fol. 2244] The government feels if such evidence does develop, or such conditions do appear, that the government would want to feel free to come in to court under this decree and submit the facts to your Honor for consideration as to whether or not it was in violation of the provisions of this decree, after directing them to the attention of the defendants.

The Court: This clause would have to be tied to the decree, too. The difficulty in these decrees is the moment you sign them the question arises as to what they mean, and the object of the statute and of the rules requiring them to be set forth is to incorporate in the injunction what is known as the Amidon decree. Judge Amidon, who for many years was a judge of the District Court in North Dakota, I believe it was, began forty years ago to agitate against injunctive decrees that were couched in general language that carried little meaning, and he tried to get around it by making decrees in simple language, and that has been the subject of a lot of discussion in all sorts of treatises, including Justice Frankfurter's in Mr. Green's famous book on the injunction, especially as it relates to labor disputes. So the new rules require two things. You would be surprised, Mr. Hall, how many decrees I have sent back because they failed to set forth the reasons for the decree. I have pointed out even an interlocutory decree [fol. 2245] has to set forth the reasons. So the object is to put it in simple language.

Here the scope of the decree is very narrow. The government is attacking just certain restrictive clauses in a contract. The moment you put in the things that you don't do, you are giving rise to the question as to why that was necessary, why exceptions are necessary.

It says nothing here about the ownership. There is merely a clause here which says in those stations which are operated by independent dealers, which are defined, you cannot do certain things. And we do not intend to

interfere with any of the rights that you may have under the law of California as a landlord or as a lessee where you are bound by agreement with your prime lessor to do certain things, whether it is operating the stations and keeping them in repair, and things like that, or even regulating the hours during which you will conduct the business or those things.

Mr. Hall: These paragraphs——

The Court: If we modify it that this decree does not relate to any other agreements between the Standard and landlord and tenant, either it is innocuous or it is confusing. I don't think we should have that in there. I will deny that.

Mr. Hall: Let me ask your Honor this: under the decree [fol. 2246] as framed, and I assume will become your Honor's decree, can we contract to supply part of the requirements of a dealer?

The Court: There is nothing to prevent you from fixing an amount. But I don't want, at the same time, to tell the government that they may not contend that in actuality it is a method of avoiding the decree.

I will rule on that when I get to it. I cannot anticipate what is going to arise.

Mr. Hall: I am not trying to avoid the decree.

The Court: It is the same situation that Texaco raised.

Mr. Hall: The whole purpose of this, this afternoon, your Honor, is so we may not be in contempt of a general decree.

The Court: This is a very simple decree. I remember one of the dissenting Justices in one of the cases pointed to the fact that the three judges, including Judge Hand, listened to six days of arguments as to the terms of the decree and the terms of the findings, and he said that they ought to take their word for it and not tell them to consider further matter.

This is a simple decree and the issues were delimited purposely.

The government stated right from the beginning that [fol. 2247] they are not seeking to divest you of any ownership in any stations; that all they are seeking is to eliminate certain clauses. And that is what it ought to be. Merely because some argument was made and certain evils were pointed out doesn't make it necessary to cover them by the decree, because I don't cover them positively.

Mr. Hall: We are simply asking your Honor as a court of equity to do an equitable thing, to tell us in these specific instances that I have suggested whether or not we can do it.

The Court: I should not be asked in advance to anticipate all the matters that might arise in the future. Supposing something happens to me, gentlemen? Younger men than I have died or become disabled. Why should I bind in advance any other judge who might be called upon to determine this by postulating a situation that is not before me?

Furthermore, we have this custom here: it is our custom that if a contempt citation is brought before one of us, at times we choose not to hear it, especially when you feel you might have to punish somebody. You heard some of the arguments in this Cole case. I had another case involving Loews, Inc., where I issued an injunction preventing a person from using the word "Metro" as a trade name for phonograph records, because the company is also in the business of selling phonographs of their own, and because [fol. 2248] the name had become associated in the trade with that firm. Everybody refers to "Metro" instead of Metro-Goldwyn-Mayer. And I issued a decree. Then when affidavits were filed asking me to punish the man for contempt, I decided that I was so close to the situation that I had better give some other judge a chance to investigate whether there was a violation. And I am glad I did, because the particular judge sent the man to jail for violating the decree, and I would rather that he did it than I did it.

I mention that merely to point out that there are so many reasons why I should not give an advance opinion as to possible violations and tie my hands or tie the hands of a future judge who might pass on any attempted violation.

There is no limit to a decree of this character. You know decrees like this have gone on for as many as twenty years. I only have ten years to go before I am eligible for retirement.

Mr. Hall: We are not asking your Honor to tie the hands of a future judge; we are asking you to put into this decree simple paragraphs, and there are not many of them, which will permit the company to incur the large expense necessary in revising its distribution system without fear of contempt before this court.

The Court: After the judgment has become final, if the judgment becomes final, then I would be open under this

[fol. 2249] general clause to a friendly discussion that may be brought up ultimately to clarify various matters. It isn't only a receiver who has a right to come to a court of equity and ask for clarification. I can conceive that you might come into court and ask, under this general decree, that certain practices that you intend to put into effect might be considered so that you could be advised about the matter, or that the decree be amplified in that respect.

Mr. Hall: That is what we are asking for now.

The Court: I wouldn't do it now. I am merely saying that I might do it.

This Judgment is not final. The Supreme Court might hold that I was absolutely wrong. They might disagree with me. I think I am right in the interpretation. They might disagree. You may be right that this is a modification of the rule in the Yellow Cab case and the other cases which called for a different judgment, and the court might agree with you.

They disagreed with you and me on the question of venue, on the question of forum non conveniens. Although, as I have said to others with whom I have discussed the matter, Mr. Justice Jackson was consistent. I would rather they based their ruling upon that case, as far as I as a trial judge am concerned, and say in no case does the doctrine apply to special venue statutes, rather than merely tell me [fol. 2250] that it does not apply to antitrust, as the other cases told me that they don't apply to the Federal Employers Liability Act. So you may be right on this.

I trust you will find me reasonable after the Judgment becomes final and you are about to engage in the practices, that you will feel free to have the United States representative come before me and discuss these matters, either formally or informally, with a view of determining, before you incur any such liability, as to whether certain practices you propose could be very well included in the decree, or there be sort of a tacit agreement that they are not objectionable, before you embark upon a new policy which somebody else might question.

All right.

Colloquy re Objections to Findings

How about the Findings?

Mr. Hall: I have nothing to say about the Findings.

The Court: All right, gentlemen.

Mr. Hall: Except I would like for the record to show that I object specifically to each and every paragraph and sentence in the proposed Findings.

The Court: That is no longer necessary. That used to be necessary under the old rule and you had to propose counter-findings, otherwise you couldn't question the sufficiency of the evidence. But that was abolished by the new rules, so it is no longer necessary. However, the record will [fol. 2251] show your usual objection, which I overruled.

Gentlemen, it is not our custom to sign a decree on a different date than findings, so I will keep the findings until you make the changes, and I will return the original to you so that you can use such pages as are not modified, and merely make the amendments that I have allowed, and then you can present it. Then without waiving objection you can make a legend that they conform to the changes allowed without waiving any right.

Mr. Dixon: Approve this as to form only, then, is that agreeable?

Mr. Hall: I will adopt his Honor's formula rather than yours, Mr. Dixon.

The Court: Put it down approved as conforming to the Court's order dated today.

Mr. Hall: How long will your Honor be in town?

The Court: I will be here until Friday, Friday morning. I will keep this copy of mine on which I have made the notations, so as to check. If you gentlemen put that notation on it, I will know as written it conforms to the order made.

We will adjourn until tomorrow morning.

[fol. 2251a] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 2252] GOVERNMENT EXHIBIT No. 1

Dealer Agreement

Dated ; 19

1. STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Company," agrees to sell to

hereinafter called "Dealer," and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at

The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity.

2. Deliveries shall be made in Company's cutomary manner. The price Dealer shall pay Company for petroleum products hereunder shall be Company's posted price to its dealers generally at time and place of delivery hereunder for the particular product and type of delivery involved. Terms shall be net cash at time of delivery, except at Company's option.

3. The products covered by this agreement shall be sold by Dealer as the products of Company and only under Company's regular trade-marks or brands for such products, and shall not be sold, or offered for sale, at prices lower than Company's authorized retail prices therefor at time and place of sale. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging the trade for gasoline or lubricating oil sold to Dealer hereunder, it is agreed that the design, size, and location of such signs shall be subject to Company's approval. Company shall be excused from making deliveries hereunder while prevented from or hindered in doing so in its customary manner due to causes beyond its control. Whenever such causes require that deliveries of any product hereunder be restricted, Company reserves the right to restrict deliveries of such product to Dealer proportionately with restrictions on deliveries of such products to other comparable dealers in Dealer's vicinity.

4. Dealer shall pay to Company for the use of Company's facilities on said premises, as follows:

5. This agreement shall be operative during the period commencing , 19 , and ending , 19 , and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first 6 months of any contract year, or at the end of any such year, by giving to the other at least 30 days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination of any [fol. 2253] lease which Company may have upon the premises covered by this agreement, or upon the termination of any sublease between Dealer and Company covering said premises.

6. Dealer acknowledges that he has thoroughly inspected the pumps, fankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees to protect, defend, and hold harmless the Company against all claims for damage to property (including Dealer's property), or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the handling therefrom of the products and goods handled by Dealer hereunder.

7. In the performance of this agreement Dealer is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his conduct in the performance of this agreement. Company reserves no right to exercise any control over any of Dealer's employees and all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in

connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

8. Any tax, or the amount thereof, now or hereafter imposed, levied, or assessed by any governmental authority upon, measured by, incident to, or as a result of the transaction herein provided for, or the transportation, production, or manufacture of the goods, the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for.

9. This agreement shall not be assignable without the prior written consent of the Company. The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default or the waiver of the default of any other provision hereof. This agreement shall, as of the commencement date hereof, terminate all prior Dealer Agreements and Agency Agreements between Dealer and Company respecting the premises covered by this agreement.

10. Company shall have the right at any time to remove from said premises any equipment or improvements placed thereunder or thereon which are now or hereafter owned by Company.

11. Execution of this agreement by Dealer constitutes an offer which shall not be deemed accepted by Company until Company has executed this agreement and delivered a duplicate original to the Dealer.

, Dealer.

STANDARD OIL COMPANY OF CALIFORNIA, Company,

By

Dealer Agreement. For Use in California, Oregon, Washington, Nevada, and Arizona.

(Here follow 2 photolithographs, side folios 2254, 2255.)

GOVERNMENT EXHIBIT NO. 2

DISTRIBUTOR AGREEMENT

Dated:.....

STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Company," hereby

APPOINTMENT appoints:....., hereinafter called "Distributor," a "Standard Stations, Inc. Authorized Distributor" for the distribution of such merchandise as is currently sold at service stations operated by Standard Stations, Inc. in Distributor's vicinity, including Atlas Tires, Atlas Tubes, and Atlas Batteries for the period commencing.....19....., and ending.....19....., and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first six (6) months of any contract year or at the end of any such year by giving to the other at least thirty (30) days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination of any lease which Company may have upon the premises covered by this agreement, or upon the termination of any sublease between Distributor and Company covering said premises.

MARKETING Company agrees to supply Distributor with its authorized type of "Distributor" sign and to supply such advertising signs and manuals as in the opinion of Company will assist Distributor in the proper marketing of merchandise hereunder. Company agrees to use, to the best of its ability, the same care, judgment and discretion in establishing other Distributors as it does in establishing service stations operated by Standard Stations, Inc., so that Distributor's business hereunder will be reasonably protected

QUANTITY Company agrees to sell to Distributor, and Distributor agrees to buy from Company and stock and offer for sale all of Distributor's requirements of petroleum products used or sold or bought to be used or sold by Distributor in the conduct of his business on the premises hereinafter described. The petroleum products to meet Distributor's requirements hereunder shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by Standard Stations, Inc. in Distributor's vicinity, and Distributor agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station.

BRAND NAMES It is understood and agreed that the product or products covered by this contract will be sold to the public as the product or products of Company under Company's regular trade-marks and brands for such product or products. Distributor is not to use, in connection with the sale and/or advertisement for sale of said product or products, any trade-mark or trade name other than those regularly used by Company for such product or products, unless expresly consented to in writing by Company. Upon written notice from Company or upon any termination of this contract, Distributor shall discontinue the use, in any manner, of Company's trade-marks or trade names.

LOCATION Distributor's requirements hereunder shall be delivered by or upon the order of Company to the station located at.....Street, City of.....,

County of....., State of.....

DELIVERY Deliveries of gasoline shall be made at the station, on orders of Distributor, by tank truck, in fairly even

DISTRIBUTOR'S RESPONSIBILITY

If Distributor shall require assistance in the operation of the station, Distributor shall provide and pay the necessary assistants. Distributor shall be responsible for all loss of or damage to consigned goods belonging to Company in Distributor's possession. Distributor agrees to protect, defend, and hold Company harmless from and against any and all claims or demands for damage to property, or for injury to or death of any persons, directly or indirectly resulting from any acts or omissions of Distributor or Distributor's employees under this contract. Any and all consigned goods in Distributor's possession upon any termination of this contract shall be returned to Company.

PAYMENT

Distributor agrees to pay to Company, for the use of service station facilities and advertising material furnished Distributor hereunder, the sum of.....dollars ($.....) a month, payable in advance on the.....day of each and every month during the life of this contract, commencing....., 19.....

TERMS ON PRODUCTS PURCHASED BY DISTRIBUTOR

Net cash at time of delivery, except at Company's option. If at any time Distributor shall fail to make any payment due hereunder, such failure shall, at Company's option, be deemed by Company to be a breach of the entire contract, and Company may suspend deliveries until such payment has been made or may terminate this contract. No such suspension or termination shall, however, affect any obligation of Distributor hereunder.

CHARGE OR TAX

Any tax, or the amount thereof, now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, or manufacture of the goods the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Distributor on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for.

PREVENTION OF PERFORMANCE

If Company is prevented from or hindered in making deliveries hereunder due to fire, riot, labor disturbances, earthquakes, war, acts of any government (whether foreign or domestic, federal, state, county or municipal), accident, total or partial failure of transportation or delivery facilities or supplies, shortage of products deliverable under this contract due to a shortage in the supply of crude oil produced in the State of California, or any cause beyond its control whether similar to the foregoing causes or not, the obligation of Company to make deliveries during the period of such disability shall be suspended.

CONDUCT OF DISTRIBUTOR'S BUSINESS

Distributor agrees to conduct all operations hereunder in strict compliance with all the laws, ordinances and regulations of governmental authorities. Distributor further agrees to conduct said operations in a manner best suited for the preservation of Company's property of whatever kind and nature, the furtherance of the sale of Company's products and the promotion of public good will towards the Company and its products. It is understood and agreed that Distributor in the performance of this agreement is engaged in an independent business, and nothing herein contained shall be construed as reserving to Company any right to control Distributor with respect to his physical conduct in the performance of this agreement. It is further understood and agreed that Company reserves no right to exercise any control over any of Distributor's employees and that all employees of the Distributor shall be entirely under the control and direction of Distributor. Distributor undertakes and agrees that he will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with [illegible] Distributor accepts exclusive liability for all com-

[fol. 2256] GOVERNMENT EXHIBIT No. 3

Petroleum Products and Equipment Agreement

Dated , 19

1. Standard Oil Company of California, a corporation, hereinafter called "Company," agrees to sell to

hereinafter called "Dealer," and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at

The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity.

2. Deliveries shall be made in Company's customary manner. The price Dealer shall pay Company for petroleum products hereunder shall be Company's posted price to its dealers generally at time and place of delivery hereunder for the particular product and type of delivery involved. Terms shall be net cash at time of delivery, except at Company's option.

3. The products covered by this agreement shall be sold by Dealer as the products of Company and only under Company's regular trade-marks or brands for such products and shall not be sold, or offered for sale, at prices lower than Company's authorized retail prices therefor at time and place of sale. Company shall be excused from making deliveries hereunder while prevented from or hindered in doing so in its customary manner due to causes beyond its control. Whenever such causes require that deliveries of any product hereunder be restricted, Company reserves the right to restrict deliveries of such product to Dealer proportionately with restrictions on deliveries of such products to other comparable dealers in Dealer's vicinity.

4. As additional consideration for Dealer's execution of this agreement, Company agrees to install the equipment and facilities listed below, title to such equipment and facilities to remain in Company:

Company agrees to purchase the following facilities and equipment from Dealer:

5. Dealer shall pay to Company for the use of Company's facilities on said premises, as follows:

[fol. 2257] 6. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees to protect, defend, and hold harmless the Company against all claims for damage to property (including Dealer's property); or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises; either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

7. In the performance of this agreement Dealer is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his conduct in the performance of this agreement. Company reserves no right to exercise any control over any of Dealer's employees and all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

8. Any tax, or the amount thereof, now or hereafter imposed, levied or assessed by any governmental authority

upon, measured by, incident to, or as a result of the transaction herein provided for or the transportation, production, or manufacture of the goods, the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for.

9. This agreement shall not be assignable without the prior written consent of the Company. The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default or the waiver of the default of any other provision hereof. This agreement shall, as of the commencement date hereof, terminate all prior Dealer Agreements between Dealer and Company or Subleases from Company to Dealer respecting the premises covered by this agreement.

10. Company shall have the right at any time to remove from said premises any equipment or improvements placed thereunder or thereon which are now or hereafter owned by Company.

N. The term of this agreement shall be from
to .

12. Execution of this agreement by Dealer constitutes an offer which shall not be deemed accepted by Company until Company has executed this agreement and delivered a duplicate original to the Dealer.

, Dealer,

STANDARD OIL COMPANY OF CALIFORNIA, Company,
By

Property Owner's Consent

The undersigned owner of the premises to which the above agreement pertains hereby agrees to Paragraph 10 thereof.

Petroleum Products and Equipment Agreement. For use in California, Oregon, Washington, Nevada and Arizona.

[fol. 2258] GOVERNMENT EXHIBIT No. 4

Dealer Agreement
TBA

Dated , 194

1. STANDARD OIL COMPANY OF CALIFORNIA, hereinafter called "Company" agrees to sell to

hereinafter called "Dealer," and Dealer agrees to buy from Company, all Dealer's requirements of petroleum products used, sold, or bought to be used or sold, by Dealer at

herein after called "said premises". The petroleum products to meet Dealer's requirements hereunder shall be those brands of such products generally sold by Company to its Dealers.

Deliveries shall be made in Company's customary manner. The price Dealer shall pay Company for petroleum products hereunder shall be Company's posted price to its dealers generally at time and place of delivery hereunder for the particular product and type of delivery involved. Terms shall be net cash at time of delivery, except at Company's option.

2. Company agrees to sell or consign to Dealer and Dealer agrees to purchase or receive from Company, and stock and offer for sale, all Dealer's requirements of tires, tubes, and batteries used or sold or bought to be used or sold by Dealer on said premises. The tires, tubes and batteries to be supplied Dealer hereunder shall be those lines supplied by Company from time to time to its dealers generally. Company will deliver to Dealer such other merchandise currently sold by Company that Dealer wishes to handle hereunder, in quantities necessary in opinion of Company to meet Dealer's requirements at said premises. Whether tires, tubes, batteries and other non-petroleum merchandise which Dealer handles hereunder shall be consigned or sold to Dealer shall depend on Company's current policies but Company will allow Dealer the commissions, or the equivalent thereof in differentials below Company's selling price therefor, as set forth in the attached Schedule "A". Company may modify this schedule from time to time. All tires, tubes, and batteries sold or con-

signed to Dealer hereunder shall be sold by Dealer at not less than Company's authorized retail prices therefor. The proceeds of the sale of consigned merchandise shall be held by Dealer as trustee for Company and paid over to Company upon demand. Dealer shall be responsible for all loss of, or damage to, consigned goods belonging to Company in Dealer's possession.

3. All expenses of the storage, handling, sale and distribution at said premises of products and merchandise consigned or sold to Dealer under this agreement shall be paid by Dealer.

4. The petroleum products covered by this agreement shall be sold by Dealer as the products of Company and only under Company's regular trade-marks or brands for such products and shall not be sold, or offered for sale, at prices lower than Company's authorized retail prices therefor at time and place of sale. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging for gasoline or lubricating oils, it is agreed that the design, size and location of such signs shall be subject to Company's approval.

5. Company shall be excused from making deliveries hereunder while prevented from or hindered in doing so in its customary manner due to causes beyond its control. Whenever such causes require that deliveries of any product or merchandise hereunder be restricted, Company reserves the right to restrict deliveries of such product or merchandise to Dealer proportionately with restrictions on deliveries of such product or merchandise to other comparable dealers in Dealer's vicinity.

6. Dealer shall pay Company for the use of Company's facilities on said premises, as follows:

7. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on said premises and that they are in good condition, and while this agreement is in force Dealer agrees to so keep them at Dealer's own cost and expense; provided, however, that Company may, at its descretion, maintain and repair said facilities.

8. Company may at any time remove from said premises any equipment or improvements placed thereunder or thereon which are now or hereafter owned by Company.

9. This agreement shall be operative during the period commencing , 19 , and ending , 19 , and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first six months of any contract year, or at the end of any such year, by giving to the other at least thirty days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agree- [fol. 2259] ment shall terminate forthwith upon the termination of any lease which Company may have upon the premises covered by this agreement, or upon the termination of any sublease between Dealer and Company covering said premises. Consigned goods in Dealer's possession upon any termination of this contract shall be returned to Company.

10. Dealer is engaged in an independent business and nothing herein shall be construed as reserving to Company any right to control Dealer's conduct in the performance of this agreement. Company reserves no right to control Dealer's employees, all of whom shall be entirely under Dealer's control and direction and he shall be responsible for their actions and omissions. Dealer shall, at his own expense, during the term hereof, maintain full insurance under applicable Workmen's Compensation Laws covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer shall pay and bear all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

11. Dealer shall protect, defend, and hold Company harmless from and against all liability for damage to property (including Dealer's property) or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees on, or in connection with the operation of, said premises.

12. Any tax, or the amount thereof, now or hereafter imposed, levied, or assessed by any governmental authority upon, measured by, incident to, or as a result of the transaction herein provided for, or the transportation, production, or manufacture of the goods, the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for.

13. This agreement shall not be assigned without the prior written consent of Company. The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default or the waiver of any other default hereunder. This agreement shall, as of the commencement date hereof, terminate all prior Dealer Agreements, Distributor Agreements, and Agency Agreements between Dealer and Company respecting said premises.

14. Execution of this agreement by Dealer constitutes an offer which Company may accept by executing this agreement and delivering a duplicate original to Dealer.

, Dealer

STANDARD OIL COMPANY OF CALIFORNIA, Company

By

Dealer Agreement TBA. For use in California, Oregon, Nevada, Washington, and Arizona.

[fol. 2260] GOVERNMENT EXHIBIT No. 5

Sublease

Dated , 19

1. STANDARD OIL COMPANY OF CALIFORNIA, a corporation, "Lessor" leases to

, "Lessee",

ducts, unless expressly consented to in writing by Company. Upon written notice from Company or upon any termination of this contract, Distributor shall discontinue the use, in any manner, of Company's trade-marks or trade names.

LOCATION

Distributor's requirements hereunder shall be delivered by or upon the order of Company to the station located at.....Street, City of.....,

County of....., State of.....

DELIVERY

Deliveries of gasoline shall be made at the station, on orders of Distributor, by tank truck, in fairly even monthly quantities.

PRICE

The price Distributor shall pay Company for petroleum products purchased by Distributor shall be Company's posted price for the same or similar products to its dealers generally in Distributor's vicinity at time and place of delivery.

SELLING PRICE

Any and all petroleum products sold to Distributor hereunder and sold by Distributor shall be sold at not less than Company's authorized retail price therefor at time and place of sale and said products shall not be advertised, offered for sale, or sold at a lower price.

PRICE SIGNS

If Distributor posts a sign or signs advertising the price or prices which Distributor is charging the trade for gasoline or lubricating oil sold to Distributor hereunder, it is agreed that the design, size, and location of such signs shall be subject to Company's approval.

OTHER MERCHANDISE

Company agrees to sell or consign to Distributor and Distributor agrees to purchase or receive from Company, and stock and offer for sale, all of Distributor's requirements of tires, tubes, and batteries used or sold or bought to be used or sold by Distributor on the premises above described. The tires, tubes and batteries to be supplied Distributor hereunder shall be Company's regular line of Atlas Tires, Atlas Tubes, and Atlas Batteries currently sold at service stations operated by Company in Distributor's vicinity. Company will deliver to Distributor such other Atlas merchandise currently sold by Company at service stations operated by Standard Stations, Inc. that Distributor wishes to handle hereunder, in quantities necessary in opinion of Company to meet the station's trade requirements. Whether tires, tubes, batteries and other non-petroleum merchandise which Distributor handles hereunder shall be consigned or sold to Distributor shall depend on Company's current policies, but Company will allow Distributor the commissions or the equivalent thereof in differentials below Company's selling price therefor, as set forth in the attached schedule marked Schedule "A" and hereby made a part hereof. This schedule may be modified from time to time by Company. All tires, tubes, and batteries sold or consigned to Distributor hereunder shall be sold by Distributor at not less than Company's authorized retail prices therefor. All expenses of the storage, handling, sale and distribution at or from the station of products and merchandise consigned or sold to Distributor under the terms of this or any other paragraph hereof shall be paid by Distributor. The proceeds of the sale of consigned merchandise shall be held by Distributor as Trustee for Company and paid over to Company on demand.

ADVERTISING

Upon any termination of this agreement, Company shall have the right to remove any and all signs and advertising matter and any other property placed on the premises by Company. Upon such termination, Distributor agrees to paint out any signs or colors at the station which may indicate in any way that Company's products are sold thereon.

OPERATION OF STATION

Distributor agrees to promote diligently the sale of products and merchandise delivered to Distributor hereunder, and to use Distributor's best efforts to increase the sale thereof, while and to the extent that Distributor is handling Company's products hereunder.

1-2014

DISTRIBUTOR'S BUSINESS

regulations of governmental authorities. Distributor further agrees to conduct [illegible] suited for the preservation of Company's property of whatever kind and nature, the furtherance of the sale of Company's products and the promotion of public good will towards the Company and its products. It is understood and agreed that Distributor in the performance of this agreement is engaged in an independent business, and nothing herein contained shall be construed as reserving to Company any right to control Distributor with respect to his physical conduct in the performance of this agreement. It is further understood and agreed that Company reserves no right to exercise any control over any of Distributor's employees and that all employees of the Distributor shall be entirely under the control and direction of Distributor. Distributor undertakes and agrees that he will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Distributor accepts exclusive liability for all contributions and payroll taxes required under the Federal Social Security Act and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

BREACH OF CONTRACT

In the event Distributor shall fail to perform or fulfill any obligation imposed on Distributor herein, Company at its option may terminate this contract forthwith. The waiver by Company of any breach of any provision hereof by Distributor shall not be deemed to be a waiver of the breach of any other provision or provisions hereof, or of any subsequent or continuing breach of such provision or provisions.

ASSIGNABILITY

This contract shall extend to and be binding upon the successors and assigns of Company and Distributor; provided, however, that no assignment hereof shall be made by Distributor without the written consent of Company.

STANDARD STATIONS, INC.

Until further notice from Company, all payments to be made and notices to be given by or to Company hereunder shall be made or given by or to Standard Stations, Inc., as the case may be.

PRIOR CONTRACTS

This contract shall, as of the commencement date hereof, terminate all prior dealer and agency agreements between Company and Distributor respecting the premises covered by this agreement.

STANDARD OIL COMPANY OF CALIFORNIA, Company

By.....

.....

....., Distributor

.....

For use in California, Oregon, Washington, Nevada and Arizona.

S B-130-E (1-42)

for the term commencing the day of , 19 , and ending the day of , 19 , the following described premises in the City of , County of , State of , together with improvements and fixtures located thereon.

2. This sublease is subject to all the terms and conditions of the lease dated the day of , 19 , from to STANDARD OIL COMPANY OF CALIFORNIA.

3. Lessee agrees to pay to Lessor as rental for the use and occupancy of the leased premises as follows:

If Lessor extends the term of the lease referred to in Paragraph 2, above, the terms and provisions of this lease [fol. 2261] shall be extended automatically for a like term, less one day, and Lessee agrees to pay to Lessor during said extended term the following rental:
If any rental shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for Lessor to re-enter the leased premises and remove all persons therefrom, and Lessee agrees to quit and deliver up the premises to the Lessor peaceably and quietly at the end of said term in as good order and condition as the same are now or may be put into.

4. Lessee shall handle and sell on the leased premises only such petroleum products as are sold Lessee by Lessor, and Lessee agrees not to store, handle, sell, or distribute on or from said premises any petroleum products of any description other than those petroleum products sold to Lessee by Lessor. The price payable by Lessee to Lessor for said petroleum products shall be Lessor's posted price for the same or similar products to its Dealers generally in Lessee's vicinity at time and place of delivery.

5. Lessee shall not sell or assign this sublease, or sublet the leased premises without written consent of Lessor first had and obtained.

6. Lessor shall pay all taxes levied or assessed during the term of this lease on any facilities while owned by Lessor

and located on the leased premises. Lessee shall pay any taxes levied or assessed as the result of improvements owned by Lessee and located on said premises.

7. Execution of this lease by Lessee constitutes an offer which shall not be deemed accepted by Lessor until Lessor has executed this sublease and delivered a duplicate original thereof to Lessee.

STANDARD OIL COMPANY OF CALIFORNIA, Lessor

By .....

.....

....., Lessee

.....

Sublease

[fol. 2262] GOVERNMENT EXHIBIT No. 6

Item A

Number of Documents Oustanding as of 3-12-47

	Calif.	Ariz.	Nev.	Ore.	Wash.	Ida.	Utah	Total
Lease (Like or substantially similar to Form S-450 or S-450-1 or S-450-2)	1716	216	99	668	840	223	182	3944
Sublease (Like or substantially similar to Form S-456)	678	82	42	322	435	116	125	1800
Dealer Agreement (Like or substantially similar to Form S-452)	695	81	50	354	356	73	47	1656
Dealer Agreement TBA (Like or substantially similar to Form S-452 TBA)	943	160	37	293	474	166	148	2221
Petroleum Products and Equipment Agreement (Like or substantially similar to Form S-475)	495	105	12	92	147	31	30	912
Total	4527	644	240	1729	2252	609	532	10,533

[fol. 2263] Item B

Use of the Distributor Agreement (like or substantially similar to Form SS-130-E) preceded use of the Dealer Agreement TBA. Use of the latter commenced in September 1944, or thereabouts, and use of the Distributor Agreement was thereupon and thereafter discontinued. As of March 12, 1947 the number of Distributor Agreements still outstanding was as follows:

Calif.	Ariz.	Nev.	Ore.	Wash.	Ida.	Utah	Total
255	36	24	96	97	33	15	556

As of the present time this 556 is 232, according to deposition of E. D. Thompson.

Distributor Agreements are not included under the 2221 Dealer Agreements TBA shown in the tabulation entitled "Number of Documents Outstanding As Of 3-12-47."

[fol. 2264] Item C

The total number of dealer retail outlets on March 12, 1947 operating under subleases (like or substantially similar to Form S-456) but not in combination with Dealer Agreement, Dealer Agreement TBA, Petroleum Products and Equipment Agreement, or Distributor Agreement.

Calif.	Ariz.	Nev.	Ore.	Wash.	Ida.	Utah	Total
1	1	0	0	0	0	0	2

Same, but in combination with Dealer Agreement or Dealer Agreement TBA or Distributor Agreement.

Calif.	Ariz.	Nev.	Ore.	Wash.	Ida.	Utah	Total
677	79	42	322	435	116	125	1,796

[fol. 2265]

Item D

Number of Retail Outlets (Other Than Company Operated Stations) as of March 12, 1947 ("Retail Outlet" Includes Service Station or Garage or Other Establishment at which Petroleum Products Are Retailed).

	Calif.	Ariz.	Nev.	Ore.	Wash.	Ida.	Utah	Total
(1) Standard *owns* the real property								
(A) Sublease* from Standard to independent dealer	7	1	1	7	2	2	3	23
(B) Occupied by independent dealer under a contract of some kind obligating the dealer to buy his requirements of petroleum products from Standard, but *without a sublease* from Standard*	40	6	3	12	22	4	0	87
(2) Standard does *not own* the real property but has a lease on the property								
(A) Sublease* from Standard to independent dealer	671	81	41	315	431	114	122	1775
(B) Occupied by independent dealer under a contract of some kind obligating the dealer to buy his requirements of petroleum products from Standard, but *without a sublease* from Standard*	1045	137	58	353	407	109	60	2169
(3) Standard does not own or have any lease on the property, but has a *contract of some kind* (not a sublease) *with the independent dealer obligating the latter to buy his requirements of petroleum products from Standard*	591	123	19	131	173	55	51	1143

* This sublease referred to is a sublease providing that the dealer shall handle and sell on the leased premises only such petroleum products as are sold by Standard.

[fol. 2266]

	Calif.	Ariz.	Nev.	Ore.	Wash.	Ida.	Utah	Total
(4) *Open accounts*—Standard does not own or have any lease on the property and there is no contract (or sublease) of any kind between Standard and the independent dealer	429	50	22	77	124	19	21	742

Number of Retail Outlets Used For Company Operated Stations as of March 12, 1947

	Calif.	Ariz.	Nev.	Ore.	Wash.	Ida.	Utah	Total
(1) Standard *owns* the real property	198	18	4	25	36	11	7	299
(2) Standard does *not own* the real property but has a lease on the property	568	31	12	59	70	7	17	764
								1063

[fol. 2267]

GOVERNMENT EXHIBIT No. 7

Year	Calif.	Arizona	Nevada	Oregon	Wash.	Utah	Idaho
Total Gross Quantities of Gasoline Shipped From Standard Oil Company of California' Refineries (Richmond, El Secundo and Bakersfield) (42-gallon barrels)							
1946	15,371,752	698,933	391,715	3,289,260	3,827,403	45,351	2,254
1947	18,106,788	931,199	418,062	3,707,282	3,161,576	36,551	920

NOTE.—Gasoline shipped above is in general delivered to Company storage. Requirements of all classes of trade are filled from such storage, and the Company has no records which would show what part of the above gasoline was received for distribution or sale to retail outlets.

Total Gross Quantities of Automotive Lubricating Oils Sold by Standard Oil Company of California and Standard Stations, Inc. Such Oils Were Shipped From Richmond and El Segundo Refineries (42-gallon barrels)							
1946	492,226	27,019	9,569	63,525	79,982	17,016	14,177
1947	570,012	26,549	9,503	62,002	81,153	18,665	14,955

NOTE.—Company records are not kept showing shipments by state of destination. Above represents sales by States—export sales are not shown.

[fol. 2268]

GOVERNMENT EXHIBIT No. 8

Total Gross Quantities of Gasoline Purchased or Acquired by Standard Oil Company of California (Other Than From Its Own California Refineries) (42-gallon barrels)

1946

	Calif.	Ariz.	Nev.	Ore.	Wash.	Utah	Idaho	N. M.	Texas
State from which shipped	.....	.....	.....	.....	.....	639,458	.....	4,032	233,570
State of Destination	.....	237,602	.....	.....	.....	471,375	168,083	.....	.....

1947

	Calif.	Ariz.	Nev.	Ore.	Wash.	Utah	Idaho	N. M.	Texas
State from which shipped	.....	.....	.....	.....	.....	829,189	.....	13,368	101,307
State of Destination	.....	114,675	.....	.....	.....	630,146	199,043	.....	.....

NOTE.—Gasoline received above is in general delivered to Company storage. Requirements of all classes of trade are filled from such storage, and the Company has no records which would show what part of the above gasoline was received for distribution or sale to retail outlets.

NOTE.—The above gasoline was acquired by purchase.

[fol. 2269] GOVERNMENT EXHIBIT No. 9

Year	Calif.	Arizona	Nevada	Oregon	Wash.	Utah	Idaho
Total Gross Quantities of Gasoline Sold by Standard Oil Company of California to Retail Dealers (42-gallon barrels)							
1946	3,225,122	393,467	197,310	861,865	1,038,245	331,431	347,054
1947	3,937,558	431,385	223,973	1,040,26[illegible]	1,233,551	365,244	393,200
Range of Posted Tank Truck Prices for Chevron Gasoline (Chevron Supreme 2¢ over Chevron Gasoline except Utah and Idaho 1.5¢ over) Including Taxes (cents per gallon)							
1946) 1947)	14. –27.9	17.5–31.3	17.5–28.9	17. –27.9	17. –26.2	19. –29.3	20.5–34.6
Total Gross Quantities of Automotive Lubricating Oils Sold by Standard Oil Company of California to Retail Dealers (42-gallon barrels)							
1946	72,928	8,871	4,450	19,475	23,448	7,469	7,830
1947	77,128	8,432	4,373	20,342	24,148	7,134	7,686
Range of Posted Prices for Barrel Deliveries of Automotive Oils Including Federal Tax (cents per gallon)							
1946–1947							
RPM Motor Oil	53. –61.	53. –64.5	55. –61.	55. –66.	55. –66.	50. –64.5	50. –66.
Standard Penn Motor Oil	66. –79.	66. –82.5	68. –79.	68. –84.	68. –84.	66. –84.	66. –84.
Zerolene Motor Oil	29. –36.	29. –39.5	31. –36.	31. –41.	31. –41.	33. –41.	33. –41.
Total Gross Quantities of Gasoline Sold at Retail Outlets Operated by Standard Oil Company of California (Standard Stations, Inc.) (42-gallon barrels)							
1946	4,990,166	285,078	90,125	439,695	548,110	110,693	57,548
1947	5,343,888	293,355	112,179	502,070	604,133	121,109	67,200

[fol. 2270]

Year	Calif.	Arizona	Nevada	Oregon	Wash.	Utah	Idaho

Range of Retail Prices for Chevron Gasoline
(Chevron Supreme 2¢ over Chevron Gasoline)
Including Taxes
(cents per gallon)

1946)							
1947)	18 –29.	22. –29.4	21.5–30.7	21. –28.8	21. –28.4	23. –29.	24.5–31.2

Total Gross Quantities of Automotive Lubricating Oils Sold at Retail Outlets Operated by Standard Oil Company of California (Standard Stations, Inc.) (42-gallon barrels)

1946	80,064	5,836	1,796	8,213	10,458	2,317	1,272
1947	77,265	5,210	1,969	8,311	10,380	2,259	1,369

Range of Retail Prices for Automotive Lubricating Oils
(Including All or Part of Federal Tax*)
(cents per quart**)

1946–1947

RPM Motor Oil	30. –40.	in each state listed above.
Standard Penn Motor Oil	30. –40.	in each state listed above.
Zerolene Motor Oil	15. –20.	in each state listed above.

* During different portions of this period with respect to different oils in addition to these prices a part of the federal tax was separately charged as follows:

1 pint to 5 quarts, inclusive	1¢
6 quarts	2¢
7 to 9 quarts, inclusive	3¢
10 to 11 " "	4¢
12 to 14 " "	5¢
15 to 17 " "	6¢
18 to 19 " "	7¢
20 quarts	8¢

In quantities above 20 quarts the above schedule was repeated.

** Lower prices than listed were in effect for sales of 5 gallons or more.

NOTE.—Sales by dollar amount are not available from the Company's records except by recapping individual invoices.

[fol. 2271] GOVERNMENT EXHIBIT No. 10

Total Number of Tires, Tubes, Batteries and Other Automotive Accessories Shipped by Companies Manufacturing or Supplying the Same to Standard Oil Company of California and/or Standard Stations, Inc., or to Others on the Order of Standard Oil Company of California and/or Standard Stations, Inc., from States *Outside* of California, Oregon, Washington, Arizona, Nevada, Idaho and Utah

1946

State Into Which Shipped*	Tires	Tubes	Batteries
California	.....	19,998	4,950
Oregon	.....	.....	.....
Washington	.....	.....	.....
Arizona	.....	.....	.....
Nevada	.....	.....	.....
Utah	.....	.....	.....
Idaho	.....	.....	.....
Total	.....	19,998(1)	4,950(2)

1947

State Into Which Shipped*	Tires	Tubes	Batteries
California	30,158	.....	1,692(3-4)
Oregon	8,459	5,004	800(4)
Washington	10,226	.....	.....
Arizona	3,969	.....	1,268(3)
Nevada	.....	.....	.....
Utah	3,509	.....	879(4)
Idaho	.....	.....	.....
Total	57,321(5)	5,004(1)	4,639

NOTE.—Source: (1) Alabama; (2) Pennsylvania; (3) Texas; (4) Oklahoma; (5) Michigan.

NOTE.—Company records do not exist which will permit a compilation like the foregoing with respect to accessories (other than tires, tubes and batteries) without a field audit of individual purchase orders, invoices and freight bills representing a volume which would require several months of investigation.

* In certain cases merchandise originally received in a given state is transshipped in the original packages to warehouses located in another state.

[fol. 2272] GOVERNMENT EXHIBIT No. 11

Tires, Tubes, Batteries and Other Automotive Accessories Shipped by Companies Manufacturing or Supplying the Same to Standard Oil Company of California and/or Standard Stations, Inc., or to Others on the Order of Standard Oil Company of California and/or Standard Stations, Inc.

Year 1946

California

	Tires	Tubes	Batteries	Other Accessories
Total number sold by company operated stations (Standard Stations).	130,079	98,371	51,328	4,228,673
Dollar volume sold by company operated stations (Standard Stations).	$2,928,990		$607,242	$1,147,841
Total number sold or consigned to retail dealers.	79,502	61,211	21,281	1,128,202
Dollar volume sold or consigned to retail dealers.	$1,192,086		$174,034	$326,268

	Arizona			
Total number sold by company operated stations (Standard Stations).	10,060	7,608	3,542	481,418
Dollar volume sold by company operated stations (Standard Stations).	$225,238		$41,705	$130,636
Total number sold or consigned to retail dealers.	16,152	12,436	3,877	156,761
Dollar volume sold or consigned to retail dealers.	$243,015		$32,345	$45,694
	Nevada			
Total number sold by company operated stations (Standard Stations).	3,000	2,269	1,459	143,124
Dollar volume sold by company operated stations (Standard Stations).	$66,267		$16,912	$38,409

[fol. 2273]

Total number sold or consigned to retail dealers.	4,307	3,316	1,120	52,254
Dollar volume sold or consigned to retail dealers.	$65,779		$9,009	$14,885
	Oregon			
Total number sold by company operated stations (Standard Stations).	13,237	10,011	4,376	533,463
Dollar volume sold by company operated stations (Standard Stations).	$297,462		$52,036	$144,196
Total number sold or consigned to retail dealers.	29,073	22,384	5,083	270,768
Dollar volume sold or consigned to retail dealers.	$435,695		$41,599	$78,104

	Tires	Tubes	Batteries	Other Accessories
		Washington		
Total number sold by company operated stations (Standard Stations).	14,296	10,811	6,042	754,656
Dollar volume sold by company operated stations (Standard Stations).	$323,828		$71,133	$204,940
Total number sold or consigned to retail dealers.	30,688	23,628	7,366	484,533
Dollar volume sold or consigned to retail dealers.	$459,052		$59,754	$140,431
		Utah		
Total number sold by company operated stations (Standard Stations).	3,530	2,670	1,667	253,720
Dollar volume sold by company operated stations (Standard Stations).	$81,857		$19,826	$69,621
Total number sold or consigned to retail dealers.	10,229	7,876	1,982	140,134
[fol. 2274]				
Dollar volume sold or consigned to retail dealers.	$152,787		$16,230	$41,059
		Idaho		
Total number sold by company operated stations (Standard Stations.)	2,294	1,735	1,042	110,597
Dollar volume sold by company operated stations (Standard Stations).	$50,392		$12,463	$29,043
Total number sold or consigned to retail dealers.	9,511	7,323	2,369	142,510
Dollar volume sold or consigned to retail dealers.	$143,680		$19,493	$41,116

	Tires	Tubes	Batteries	Other Accessories
	Year 1947			
	California			
Total number sold by company operated stations (Standard Stations).	139,509	159,103	54,833	6,576,847
Dollar volume sold by company operated stations (Standard Stations).	$3,010,092		$890,196	$1,744,110
Total number sold or consigned to retail dealers.	97,053	89,817	31,058	1,167,065
Dollar volume sold or consigned to retail dealers.	$1,451,134		$329,484	$457,090
	Arizona			
Total number sold by company operated stations (Standard Stations).	15,132	17,258	3,906	580,021
Dollar volume sold by company operated stations (Standard Stations).	$325,153		$63,583	$154,164
Total number sold or consigned to retail dealers.	16,213	15,003	4,987	161,671
[fol. 2275]				
Dollar volume sold or consigned to retail dealers.	$241,911		$53,429	$62,865
	Nevada			
Total number sold by company operated stations (Standard Stations).	4,562	5,201	1,304	226,110
Dollar volume sold by company operated stations (Standard Stations).	$97,939		$21,216	$59,385
Total number sold or consigned to retail dealers.	6,612	6,119	1,641	58,101
Dollar volume sold or consigned to retail dealers.	$98,268		$17,723	$22,443

	Tires	Tubes	Batteries	Other Accessories
		Oregon		
Total number sold by company operated stations (Standard Stations).	16,998	19,386	5,820	776,638
Dollar volume sold by company operated stations (Standard Stations).		$368,933	$94,859	$206,911
Total number sold or consigned to retail dealers.	33,489	30,992	7,954	308,186
Dollar volume sold or consigned to retail dealers.		$501,409	$84,320	$120,677
		Washington		
Total number sold by company operated stations (Standard Stations).	22,180	25,296	8,194	1,160,042
Dollar volume sold by company operated stations (Standard Stations).		$476,525	$132,618	$309,095
Total number sold or consigned to retail dealers.	37,541	34,742	11,363	550,692
[fol. 2276]				
Dollar volume sold or consigned to retail dealers.		$559,411	$120,176	$215,197
		Utah		
Total number sold by company operated stations (Standard Stations)	5,182	5,910	1,378	344,080
Dollar volume sold by company operated stations (Standard Stations).		$115,385	$22,970	$90,586
Total number sold or consigned to retail dealers.	9,812	9,080	2,651	131,358
Dollar volume sold or consigned to retail dealers.		$147,730	$27,851	$51,580

	Tires	Tubes	Batteries	Other Accessories
		Idaho		
Total number sold by company operated stations (Standard Stations).	3,731	4,255	1,148	167,124
Dollar volume sold by company operated stations (Standard Stations).		$79,878	$18,007	$44,232
Total number sold or consigned to retail dealers.	12,584	11,647	3,472	149,041
Dollar volume sold or consigned to retail dealers.		$188,438	$36,846	$58,617

(Items received from states outside the seven western states and also from *within* the seven western states are commingled in inventory and lose their source identity as shipments are made to dealers and Standard Stations, Inc.)

[fol. 2277] GOVERNMENT EXHIBIT NO. 12

Total Number of Tires, Tubes, Batteries and Other Automotive Accessories Shipped by Companies Manufacturing or Supplying the Same *Located in* California, Oregon, Washington, Arizona, Nevada, Idaho and Utah to Standard Oil Company of California and/or Standard Stations, Inc., or to Others on the Order of Standard Oil Company of California and/or Standard Stations, Inc.

1946

State Into Which Shipped*	Tires	Tubes	Batteries
California	214,617	214,244	77,482
Oregon	55,627	57,012	13,555
Washington	54,500	40,370	15,024
Arizona	27,062	25,143	6,439
Nevada	.....	.....	.....
Utah	24,055	17,252	5,208
Idaho	.....	.....	.....
Texas and New Mexico	8,675	7,729	2,857
Total	384,536	361,850	120,565

1947

State Into Which Shipped*	Tires	Tubes	Batteries
California	279,267	372,251	104,681
Oregon	72,708	98,767	18,118
Washington	70,457	70,263	21,915
Arizona	34,753	43,614	8,593
Nevada	.....	.....	.....
Utah	30,954	30,013	7,168
Idaho	.....	.....	.....
Texas and New Mexico	.....	.....	.....
Total	488,139	614,908	160,475

NOTE.—All tires, tubes and batteries shown above came from California.

NOTE.—Company records do not exist which will permit a compilation like the foregoing with respect to accessories (other than tires, tubes and batteries) without a field audit of individual purchase orders, invoices and freight bills representing a volume which would require several months of investigation.

*In certain cases merchandise originally received in a given state is transshipped in the original packages to warehouses located in another state.

GOVERNMENT EXHIBIT NO. 16

MEMORANDUM

San Francisco, California
June 13, 1945

LEASE SITE AND LESSOR BUILT STATION
LOAN $4,000.00
KAMAS, UTAH

MR. E. J. McCLANAHAN:

It is recommended Company lease site and lessor built service station and garage at First South and Main Street, Kamas, Utah for a period of 10 years. Company to loan Lessor $4,000.00 to assist Lessor in the construction of facilities, securing a return of $2,500.00 without interest in 120 equal monthly payments, lease and sublease at offset rentals. The loan is to be secured by a first mortgage and Lessor's promissory note.

The proposed transaction exceeds Dealer Sales authority inasmuch as 100% of the loan principal is not to be repaid and the amount to be repaid covers a period of 120 months rather than 60 months.

Estimated Normal Sales:	4,000 gallons a month
Loan:	$4,000.00
Repayment:	$2,500.00 at no interest in 120 equal monthly payments.
Security:	First mortgage on property. No Appraisal has been secured but the estimated value of the vacant site is estimated at $500.00 and our Lease with Lessor will provide that improvements to be made will not be less than $6,000.00.
Proposed Lease:	10 year period from date construction is completed. Lease provides for a gallonage carry-over clause extending tenure until 484,000 gallons have been sold.
Proposed Ground Rental:	$40.00 a month
Rental:	Offset under sublease.
Maximum Lease Commitment:	30 days
Maximum Assured Tenure:	120 months
Deficit under Operating Agreements:	None
Deficit under Loan:	$1,500.00
Deficit per Month:	$12.50
Deficit per Gallon:	.31¢

1325

MR. E. J. McCLANAHAN: June 13, 1945

Ordinarily we do not like to consider making a loan where full return of the principal is not received. However, the Salt Lake District has advised that the Utah Oil and Refining Company, who at present do not have any representation at Kamas, offered our proposed Lessor a week after our deal was tentatively concluded, $5,000.00 towards construction of his service station and garage with 100% absorption with no note or mortgage as security.

Proposed Lessor, Harold W. Butler, has been a resident of Kamas for 31 years, is an experienced mechanic, well known and liked in the Community. Dun and Bradstreet's report says record good and local bank advises his net worth is $12,000.00. Mr. Butler will have $2,000.00 of his own funds in the proposed construction. A projected income and expense statement shows a monthly return of $379.00 to Dealer, based on 4,000 gallons of gasoline per month, after all expenses have been met.

We have one other account in the City of Kamas at the present time, however, it is felt that proposed service station and garage will not detrimentally affect our existing account.

It is recommended favorable consideration be given to this proposal.

E. D. THOMPSON

EDT

6/14/45 OK based on financial status and security of real estate & chattel title 1st Hartline Saw

OK J. Mack 6/14/45

GOVERNMENT EXHIBIT NO. 16-A

LEASE

Dated April 10, 194 5

1. HAROLD W. BUTLER and TESSA T. BUTLER, his wife,

Lessor,

hereby leases to STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Lessee, for the term commencing on the 1st day of June, 19 45, and ending on the 31st day of May, 19 55, the following described premises in the City of Kamas, County of Summit, State of Utah:

Commencing at the northeast corner of Lot Three, Block Sixteen, Kamas Townsite Survey, and running thence West One-hundred and Twenty-three and three-quarters feet, thence South One-hundred feet, thence East One-hundred and Twenty-three and three-quarters feet, thence North One-hundred feet to the place of beginning,

together with all improvements and fixtures now or hereafter placed on said premises by Lessor.

2. Lessee agrees to pay Lessor rental for the use and occupancy of the leased premises as follows:

In advance on the first day of each and every calendar month during the term hereof, the sum of Forty and no/100 Dollars ($40.00),

provided, however, that no rentals shall be due and payable hereunder until the date on which possession of the leased premises is delivered over to Lessee with the service station completely constructed thereon and all fixtures and equipment installed by Lessor in accordance with Paragraph 3 hereof. Lessee shall have the right to set off against rental [illegible] any rentals owing Lessee by Lessor under the terms of any other agreement in effect between

3. Lessor agrees forthwith to construct a service station and garage satisfactory to Lessee, on the leased premises, at Lessor's own expense, in strict accordance with the ground plan, plan of elevations, and list of improvements and fixtures and Exhibit "B" marked Exhibit "A", all of which are hereto attached, and made a part hereof, title to all such property to remain in Lessor. Should any of the improvements or fixtures become obsolete or unfit for the purposes intended, Lessee shall have the right at Lessee's option to return any such improvements or fixtures to Lessor at .....

..... Kemas, Utah ....., and to replace the same with such improvements, fixtures or equipment as Lessee may deem necessary; title, however, to such new improvements, fixtures or equipment to remain in Lessee.

4. Lessor agrees to maintain in good condition and repair all service station equipment, facilities, yards, driveways, and other improvements installed or made by Lessor on the leased premises. Should Lessor fail to so maintain and repair, Lessee shall, at Lessee's option, have the right either to make such repairs, and deduct the cost thereof from rents accruing hereunder, with reasonable interest allowance for monies advanced, or to terminate this lease.

5. Lessor agrees to insure the leased premises and all property placed thereon by Lessor against loss by fire. In the event said premises or property are destroyed wholly or in part by any cause during the term hereof, then Lessor shall forthwith re-enter said leased premises and shall with diligence repair the destroyed portion or portions of said premises or property. If, however, the leased premises or the destroyed portion thereof become untenantable in the opinion of Lessee, then the rent shall cease until such time as they are again, in the opinion of Lessee, tenantable. Should Lessor neglect forthwith to restore said premises to the same condition as they were prior to their destruction, Lessee shall, at Lessee's option:

(a) Repair said premises, deducting the cost thereof from rents accruing, with reasonable interest allowance for monies advanced, or

(b) Terminate this lease.

Notwithstanding the foregoing, Lessor shall not be obligated to restore or repair any improvements, fixtures or equipment placed on the leased premises by Lessee.

6. Lessee shall have the right at any time during Lessee's occupancy of the lease premises, or within a reasonable time thereafter to remove any and all buildings, improvements, fixtures, or equipment placed by Lessee or by Lessee's predecessor in interest, in, under, or upon the leased premises or acquired by Lessee whether before or during the term hereof, but Lessee shall not be obliged to do so.

(b) Terminate this lease.

Notwithstanding the foregoing, Lessor shall not be obligated to restore or repair any improvements, fixtures or equipment placed on the leased premises by Lessee.

6. Lessee shall have the right at any time during Lessee's occupancy of the lease premises, or within a reasonable time thereafter to remove any and all buildings, improvements, fixtures, or equipment placed by Lessee or by Lessee's predecessor in interest, in, under, or upon the leased premises or acquired by Lessee whether before or during the term hereof, but Lessee shall not be obliged to do so.

7. Lessee shall pay all taxes levied or assessed during the term of this lease on any facilities located on the leased premises while such facilities are owned by Lessee. All other real or personal property taxes or assessments, including all street improvements or other special taxes or assessments, shall be paid by Lessor.

8. Lessee shall have the right during its occupancy of the leased premises to use such premises for any lawful purposes whatsoever, including, but without limiting the generality of the foregoing, the use of such premises for service station purposes. Lessee shall further have the right during its occupancy, to rearrange or remodel any improvements, trade or other fixtures, structures, buildings, or equipment on said leased premises; to construct and maintain on the leased premises such other buildings, structures, improvements or equipment as Lessee may desire, and to remove the same or any part thereof at will; and to cut curbs, construct roadways and use sidewalks for vehicles to pass to and from the leased premises. If it is or becomes unlawful for any reason to conduct any operation or to erect or maintain any structure on the leased premises, or if any part of the leased premises or the approaches thereto are condemned or changed by public authority, so that it becomes impossible or impracticable in Lessee's opinion to use the leased premises for any purpose for which such premises are being used at the time such use is declared unlawful or such condemnation or change is effected, then Lessee shall have the right to terminate this lease by giving Lessor ten (10) days notice in writing of such termination.

9. Every provision hereof imposing an obligation on Lessor is a material inducement and consideration for the execution of this lease by Lessee, and any breach, violation, or failure with respect thereto shall entitle Lessee to terminate this lease forthwith by giving Lessor written notice of such termination, and no waiver by Lessee of any such breach, violation, or failure, shall waive any continuing, subsequent, or other breach, violation, or failure.

10. If any tax or charge is hereafter imposed upon Lessee, pursuant to any so-called Chain Store Tax Law hereinafter enacted by any governmental authority, for or on account of the operation of a service station on the leased premises, Lessee may terminate this lease at any time on ninety (90) days' notice to Lessor served after the enactment of such law.

11. If Lessee shall hold over after the expiration of the term of this lease, or any extension thereof, such tenancy shall be from month to month only and upon all the terms, covenants, and conditions hereof.

~~notice in writing of Lessee's intention so to do at any time prior to the expiration of the term hereof.~~

12. The term of this lease is hereby extended from the first day of June, 1955 for a period equal to the period from June 1, 1945 until the service station and garage referred to in Paragraph #3 hereof is completed as provided therein, subject however to the right of termination hereinafter provided for.

12a. If, during the term of this lease as hereinabove extended, the Lessor has not purchased from the Lessee a total of Four-hundred and Eighty-four Thousand (484,000) gallons of gasoline for delivery on the demised premises, the term of this lease shall be automatically extended until such time as Four-hundred and Eighty-four Thousand (484,000) gallons of gasoline have been purchased and delivered.

13. Lessee, while in possession, shall have the prior right, to be exercised by it or by its nominee, to buy the whole or any part of the leased premises or any larger parcel of which the leased premises are a part. If Lessor receives from a third party an acceptable bona fide offer to buy such property, Lessor shall forthwith give Lessee written notice of such offer. Lessee or its nominee shall have thirty (30) days from the receipt of such notice to buy such property at the terms of such offer relating to such property, or at such lesser terms as Lessor and Lessee or its nominee may agree upon. If Lessee or its nominee fails to exercise this option and Lessor sells such property to a third person, such sale shall be made subject to this lease. Lessee agrees to notify Lessor in writing of any nominee designated for the purpose of this paragraph, and warrants that such nominee will be financially responsible; Lessor agrees to recognize and accept any such designation of nominee for the purpose of this paragraph.

14. Lessee shall have the right to terminate this lease at any time during the term hereof, or any extension thereof, by giving Lessor thirty (30) days written notice of Lessee's intention so to do.

15. All rentals payable hereunder shall be paid to Harold W. Butler

Kamas, Utah

less and until Lessor designates some other party to receive rentals.

16. Written notices to Lessor hereunder shall be addressed to Lessor at Kamas, Utah

17. Written notices to Lessee hereunder shall be given to Lessee at

P. O. Box 719, Salt Lake City 9, Utah All notices shall be deposited in the United States Post Office properly addressed as aforesaid, postage fully prepaid, for delivery by registered mail

18. Execution of this lease by Lessor constitutes an offer which shall not be deemed accepted by Lessee until Lessee has executed this lease and delivered a duplicate original thereof to Lessor.

19. This lease shall bind and inure to the benefit of the successors and assigns of Lessee, and shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of Lessor.

18. Execution of this lease by Lessor constitutes an offer which shall not be deemed accepted by Lessee until Lessee has executed this lease and delivered a duplicate original thereof to Lessor.

19. This lease shall bind and inure to the benefit of the successors and assigns of Lessee, and shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of Lessor.

IN WITNESS WHEREOF, these presents are hereby signed in triplicate by the parties hereto.

DATE PHOTO TAKEN .....
DATE .....

APPROVED .....
.....
.....
.

EXHIBIT "A"

7585

165'

Adjoining Property

MAIN ST and U.S. Highway 12

1330

2283

165'

Main

1st South ST.

36'

Utility

Shelves

Shelves

Shelves

Repair

Installation

12'

office

30'

15'

15'

16'

15'

Gas & Water Mail

100'

Street Light

1T and U.S. Highway 189

PROPOSED IMPROVEMENTS
MAIN ST. AND 1ST SOUTH
KAMAS, UTAH
1" = 20'

4-8-45

EXHIBIT "B"

One Cinder block combination garage and service station building including concrete floor, concrete foundation, walls, doors, window frames and glass, down-spouts and gutters, cabinets, shelves and tire rack.

All necessary wiring and conduits, air and water pipes, lighting fixtures, sewer and drain pipe, suitable heating facilities and concrete approaches.

Pump block and concrete slab.
Septic tank.
2 - Men & Women restrooms complete with toilets, wash basin and fixtures.
2 - Gasoline computing pumps
2 - 1000-gallon U.G.S. tanks
1 - Compressor
Light pole with 2 Benjamin floodlights
1 - 2-post truck auto hoist
Suitable lubrication grease guns, gear lube dispensers and equipment.

H W B
T. B.

2283-A

GOVERNMENT EXHIBIT NO. 16-B

SUBLEASE

Dated April 10, 1945

1. STANDARD OIL COMPANY OF CALIFORNIA, a corporation, "Lessor" leases to HAROLD W. BUTLER and TESSA T. BUTLER, his wife, "Lessee", for the term commencing the 1st day of June, 19 45, and ending the 30th day of May, 19 55, the following described premises in the City of Kamas, County of Summit, State of Utah

Commencing at the northeast corner of Lot Three, Block Sixteen, Kamas Townsite Survey, and running thence West One-hundred and Twenty-three and three-quarters feet, thence South One-hundred feet, thence East One-hundred and Twenty-three and three-quarters feet, thence North One-hundred feet to the place of beginning.

The term of this Sublease shall be extended from the 31st day of May, 1955 for a period equal to the period from June 1, 1945 until the combination service station and garage referred to in Paragraph #3 of that certain lease dated April 10, 1945 referred to in Paragraph #2 hereof has been completed as provided therein.

shall be extended automatically for a like term, less one day, and Lessee agrees to pay to Lessor during said extended term the following rental:

In advance on the first day of each and every month the sum of Forty and no/100 Dollars ($40.00).

GOVERNMENT EXHIBIT NO. 16-C

P 7785

DEALER AGREEMENT

Dated April 10, , 19 45

1. STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Company," agrees to sell to HAROLD W. BUTLER hereinafter called "Dealer," and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at N.E. corner of First South and Main Street, Lemas, Utah

The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity.

2. Deliveries shall be made in Company's customary manner. The price Dealer shall pay Company for petroleum products hereunder shall be Company's posted price to its dealers generally at time and place of delivery hereunder for the particular product and type of delivery involved. Terms shall be net cash at time of delivery, except at Company's option.

3. The products covered by this agreement shall be sold by Dealer as the products of Company and only under Company's regular trade-marks or brands for such products. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging the trade for gasoline or lubricating oil sold to Dealer hereunder, it is agreed that the design, size, and location of such signs shall be subject to Company's approval. Company shall be excused from making deliveries hereunder while prevented from or hindered in doing so in its customary manner due to causes beyond its control. Whenever such causes require that deliveries of any product hereunder be restricted, Company reserves the right to restrict deliveries of such product to Dealer proportionately with restrictions on deliveries of such products to other comparable dealers in Dealer's vicinity.

4. Dealer shall pay to Company for the use of Company's facilities on said premises, as follows:

None.

of any lease which Company may have upon the premises covered by this agreement, or upon the termination of any sublease between Dealer and Company covering said premises.

6. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees to protect, defend, and hold harmless the Company against all claims for damage to property (including Dealer's property), or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

7. In the performance of this agreement Dealer is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his conduct in the performance of this agreement. Company reserves no right to exercise any control over any of Dealer's employees and all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

8. Any tax, or the amount thereof, now or hereafter imposed, levied, or assessed by any governmental authority upon, measured by, incident to, or as a result of the transaction herein provided for, or the transportation, production, or manufacture of the goods, the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for.

9. This agreement shall not be assignable without the prior written consent of the Company. The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default or the waiver of the default of any other provision hereof. This agreement shall, as of the commencement date hereof, terminate all prior Dealer Agreements and Agency Agreements between Dealer and Company respecting the premises covered by this agreement.

10. Company shall have the right at any time to remove from said premises any equipment or improvements placed thereunder or thereon which are now or hereafter owned by Company.

11. Execution of this agreement by Dealer constitutes an offer which shall not be deemed accepted by Company until Company has executed this agreement and delivered a duplicate original to the Dealer.

premises covered by this agreement.

10. Company shall have the right at any time to remove from said premises any equipment or improvements placed thereunder or thereon which are now or hereafter owned by Company.

11. Execution of this agreement by Dealer constitutes an offer which shall not be deemed accepted by Company until Company has executed this agreement and delivered a duplicate original to the Dealer.

Harold W Sutton, Dealer

STANDARD OIL COMPANY OF CALIFORNIA, Company

By W. J. Watson
Attorney in Fact

7-8-VC

Dealer Agreement.
For Use in Utah and Idaho.

5-452 U 8-1 (2-44)

Harold W. Butler and Tessa T. Butler, his wife, mortgagors, in consideration of the sum of Four Thousand Dollars, ($4,000.00), to them in hand paid by Standard Oil Company of California, a corporation, mortgagee, do hereby convey and warrant unto the mortgagee the following described real property located in Kamas, Summit County, State of Utah, to wit:

> Commencing at the northeast corner of Lot Three, Block Sixteen, Kamas Townsite Survey, and running thence West One-hundred and Twenty-three and three-quarters feet; thence South One-hundred feet; thence East One-Hundred and Twenty-three and three-quarters feet; thence North One-hundred feet to the place of beginning.

This conveyance is intended to be a mortgage securing the payment of a promissory note in the principal sum of $4000.00 and interest dated April 10, 1945, and payable in monthly installments of $20.83 each.

Mortgagors covenant and agree to pay all taxes and special assessments levied or assessed against said property and to keep all buildings and improvements thereon insured against loss or damage by fire and other casualty in the amount of the insurable value thereof and to pay all premiums required for such insurance promptly when the same become due. Such insurance shall provide for the loss to be payable to the mortgagee and the mortgagors as their interests in the mortgaged property may appear at the time of such loss or damage. Such insurance shall be procured in insurance companies acceptable to the mortgagee and the policy or policies delivered to it.

The mortgagors agree to procure promptly and maintain in force insurance covering all buildings and improvements hereafter placed upon the mortgaged premises insuring such buildings and improvements against loss by fire and other casualty in the amount of the insurable value thereof. Such insurance shall provide for the loss to be payable to the mortgagee and the mortgagors as [fol. 2289] their interests in the mortgaged property may

together with improvements and fixtures located thereon.

Lessor shall have the right to terminate this lease at the end of any leasehold year during the term hereof, or at the end of the first six (6) months of any such year, by giving to Lessee, at least thirty (30) days prior thereto, written notice of its intention so to terminate this lease.

2. This sublease is subject to all the terms and conditions of the lease dated the 10th day of April, 19 45, from Harold W. Butler and Tessa T. Butler, his wife, to STANDARD OIL COMPANY OF CALIFORNIA.

3. Lessee agrees to pay to Lessor as rental for the use and occupancy of the leased premises as follows:

In advance on the first day of each and every month during the term hereof the sum of Forty and no/100 Dollars ($40.00).

~~In addition thereto the sum of Twenty and 83/100 Dollars ($20.83) on the first~~ day of each and every month during the term hereof, provided however, that this additional rental shall not become due ~~or~~ payable hereunder until the combination service station ~~and garage~~ referred to in Paragraph #3 of the Lease above mentioned ~~has been completed as provided therein.~~

If any rental shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for Lessor to re-enter the leased premises and remove all persons therefrom, and Lessee agrees to quit and deliver up the premises to the Lessor peaceably and quietly at the end of said term in as good order and condition as the same are now or may be put into.

4. Lessee shall handle and sell on the leased premises only such petroleum products as are sold Lessee by Lessor, and Lessee agrees not to store, handle, sell, or distribute on or from said premises any petroleum products of any description other than those petroleum products sold to Lessee by Lessor. The price payable by Lessee to Lessor for said petroleum products shall be Lessor's posted price for the same or similar products to its Dealers generally in

If any rental shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for Lessor to re-enter the leased premises and remove all persons therefrom, and Lessee agrees to quit and deliver up the premises to the Lessor peaceably and quietly at the end of said term in as good order and condition as the same are now or may be put into.

4. Lessee shall handle and sell on the leased premises only such petroleum products as are sold Lessee by Lessor, and Lessee agrees not to store, handle, sell, or distribute on or from said premises any petroleum products of any description other than those petroleum products sold to Lessee by Lessor. The price payable by Lessee to Lessor for said petroleum products shall be Lessor's posted price for the same or similar products to its Dealers generally in Lessee's vicinity at time and place of delivery.

5. Lessee shall not sell or assign this sublease, or sublet the leased premises without written consent of Lessor first had and obtained.

6. Lessor shall pay all taxes levied or assessed during the term of this lease on any facilities while owned by Lessor and located on the leased premises. Lessee shall pay any taxes levied or assessed as the result of improvements owned by Lessee and located on said premises.

7. Execution of this lease by Lessee constitutes an offer which shall not be deemed accepted by Lessor until Lessor has executed this sublease and delivered a duplicate original thereof to Lessee.

STANDARD OIL COMPANY OF CALIFORNIA, Lessor

By W. F. Watson
Attorney in fact.

Harold W Butler, Lessee

Tessa J. Butler

Sublease

B-486
(1-49)

2285

4. Dealer shall pay to Company as the sole [illegible]

None.

Dealer's attention is called to the fact that as of the date of this agreement there is a shortage of gasoline and other petroleum products on the Pacific Coast due to the needs of the Armed Forces and the war effort. Therefore, Company will not be able to, nor shall it be obligated to deliver all the gasoline or other petroleum products required by Dealer as specified in Paragraph 1 of this agreement during the period of such shortage. It is Company's present intention to prorate its available supply of products equitably among its customers (contract or otherwise) during this and other periods of product shortage or whenever due to any of the other causes enumerated in the prevention of performance paragraph of this agreement Company is unable to make deliveries to all such customers. However, Company shall in no way be obligated to thus prorate its available supply and its failure, partial or otherwise, to make deliveries to Dealer shall not be a breach of this agreement, notwithstanding that Company is making deliveries to others. Upon termination of the cause or causes for suspension of deliveries, performance hereunder shall be resumed, but nothing herein shall be construed as extending the term of this agreement.

5. This agreement shall be operative during the period commencing June 1, 1948, and ending May 31st, 1955, and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first 6 months of any contract year, or at the end of any such year, by giving to the other at least 30 days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination

appear and the policy or policies shall be delivered to the mortgagee.

Should the mortgagors fail to pay any taxes or insurance premiums when the same become due the mortgagee at its option may pay the same and the amount so advanced by it shall be secured by this mortgage and shall be due and payable on demand and shall bear interest from the date of such payment at the rate of eight per cent per annum until repaid.

Mortgagors covenant and agree to keep and maintain all buildings and improvements located on the mortgaged premises or that may hereafter be placed thereon in good condition and state of repair and not to remove the same therefrom without the written consent of the mortgagee first had and obtained.

Should default be made by the mortgagors in the performance of any of the covenants or conditions hereof to be by them performed or in the payment of the indebtedness secured hereby as and when the same becomes due, the mortgagee may proceed to foreclose this mortgage.

If suit be brought to foreclose this mortgage, the mortgagee shall be entitled to have a receiver appointed to take possession of the mortgaged property, to operate the same, to make all needed repairs thereon, to lease the same and collect and receive all rents, issues and profits therefrom pending such foreclosure proceedings and to do all things necessary or proper to fully protect and preserve the mortgaged property.

Should the proceeds of any foreclosure sale of the mortgaged premises be insufficient to pay the full amount of the indebtedness secured hereby together with all costs and expenses of foreclosure including the costs and expenses of receivership and a reasonable attorney's fee, the mortgagors agree to pay the amount of such deficiency.

[fol. 2290] Should suit be brought to foreclose this mortgage, the mortgagors agree to pay all costs and expenses incident thereto including the costs and expenses of any receivership together with a reasonable attorney's fee.

Witness the hands of the mortgagors this 10th day of April, 1945.

STATE OF UTAH,
County of Summit, ss.

On the —— day of April, 1945, personally appeared before me, a Notary Public, Harold W. Butler and Tessa T. Butler, his wife, signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

——, Notary Public, Residing at: ——.

My commission expires: ——.

[fol. 2291] GOVERNMENT EXHIBIT No. 16–E

Promissory Note

Salt Lake City, Utah. April 10, 1945.

$4000.00

I, we, and either of us, promise to pay to Standard Oil Company of California, a corporation, or its order, the sum of Four Thousand Dollars, ($4000.00), in installments as follows [H. W. B., T. T. B.]:

$20.83 on or before July 1, 1945; and
$20.83 on or before the 1st day of each succeeding month thereafter until the full sum of $4000.00 has been paid.

Delinquent installment shall bear interest at the rate of six per cent per annum from the due date thereof.

In the event of default in the payment of any installment hereof when the same becomes due, the holder hereof may declare the remaining unpaid installment hereof immediately due and payable and proceed to collect the whole of such unpaid installments. If suit be brought to collect this note or any installment thereof, the makers agree to pay all costs and expenses incident thereto including a reasonable attorney's fee.

Harold W. Butler, Tessa T. Butler.

[fol. 2292] GOVERNMENT EXHIBIT No. 16-F

STANDARD OIL COMPANY OF CALIFORNIA

Standard Oil Building, San Francisco, Cal.

April 10, 1945.

Mr. Harold W. Butler, Mrs. Tessa T. Butler, Kamas, Utah.

DEAR SIR AND MADAM:

Reference is made to the following documents:

a. Your promissory note in our favor dated April 10, 1945, in the principal sum of $4000.00 payable in installments.

b. Your mortgage in our favor securing the above mentioned promissory note covering the following described premises located in Kamas, County of Summit, State of Utah, to wit:

Commencing at the northeast corner of Lot 3, Block 16, Kamas Townsite Survey, and running thence West 123¾ feet; thence South 100 feet; thence East 123¾ feet; thence North 100 feet, to the place of beginning.

c. Sublease dated April 10, 1945, wherein we have subleased to you the property above described for a term commencing on the 1st day of June, 1945, and ending on the 30th day of May, 1955.

If the above mentioned sublease remains in full force and effect during the term thereof and if all rental due and to become due thereunder during the full term thereof is paid to us at the time and in the manner provided for in said sub-lease, we will cancel your promissory note and surrender the same to you and release the mortgage above referred to.

We do hereby expressly waive any right to declare any installment of your promissory note to be due or payable so [fol. 2293] long as you are not in default in the performance of the terms of the lease between us dated April 10, 1945, covering the property above described requiring you to construct a service station and garage on the property above described.

We also waive any interest which may become due under

the terms of your promissory note so long as you are not in default in the performance of the terms of said lease requiring you to construct a service station and garage.

Very truly yours, Standard Oil Company of California, by W. G. Watson, Attorney in fact.

3-2E.

F. & V.C. A. W. D. J. M. M. G H. Rogers, ——— ———, E D. Thompson, J. W. B.

[fol. 2294] GOVERNMENT EXHIBIT No. 17

MEMORANDUM

San Francisco, California

March 12, 1945

Loan—$10,000. SS. 3961 A. D.

Mildred C. Ransom, 3rd & Main Sts., Hermiston, Oregon

Mr. E. J. McClanahan

It is recommended Company loan dealer $10,000 to assist in purchase of the subject existing service station and garage, sign a ten year lease, sublease and dealer agreement TBA on a two-party basis.

Previously, proposal wherein it was recommended that Company purchase the realty and facilities for $10,000 and resell to dealer over a ten-year term, was not approved by Central Counties Company.

The recommended loan proposal exceeds Dealer Sales authority as to amount recommended to be loaned and return to be received on loan.

Estimated Normal Sales: 7,000 gallons of gasoline a month.

Loan: $10,000.

Repayment: 60% over a period of five years—no interest.

Security: First mortgage on real estate and facilities valued at $13,500.

Facilities Investment:

Value of existing: $3,206—no return to be secured.

New: None.

Ground Rental: $70.00 a month—1¢ a gallon (offset).

Realty & Improvement Taxes: (To be paid by Company) $14.83 a month—.212¢ a gallon.

Maximum Lease Commitments: 1 month.

Maximum Assured Tenure: (including options), 120 months.

Absorption Under Operating Agreements and Note: 1.070¢.

Netback for Chart Computation: 9.074¢ — (Wholesale Dealer now receiving 1.5¢ commission on gasoline, .5¢ of which is on an oral day-to-day basis. This temporary allowance is not included in above computation.)

Minimum Allowable Netback: 7.58¢ a gallon.

Dealer has right to terminate Company's present agreements by paying Company $3,206 (depreciated value of Company's existing investment) and has stated intention to do so if transaction is not approved. Texas Company [fol. 2295] has contacted dealer regarding establishing him as their wholesale distributor. (Texas Company does not now have bulk distribution plant in vicinity.)

This station represents 48.7% of the total resale business enjoyed by Wholesale Distributor who earned $632.00 net commission on sales to this unit in 1944. If account lost, it will undoubtedly be necessary to increase rate of commissions to Wholesale Distributor.

This proposal provides the dealer with a "stake in the business." Mr. Ransom, having 14 years' experience with Company's products as a dealer at Milton, Oregon, will operate the station which includes a Chevrolet Car and Truck Agency.

Proposal admirably fits Spokane's Representation Objective, this account being the only dealer Company has in Hermiston.

May we have your approval?

E. D. Thompson.

O.K. E. J. McC. 3/15/45.

[fol. 2296] GOVERNMENT EXHIBIT No. 17-A

Standard Oil Company of California

Date, May 6, 1947.

Mildred C. Ransom,
Main & 3rd Streets,
Hermiston, Oregon.

DEAR MADAM:

Reference is made to that certain Dealer agreement dated March 19, 1945, as now operative between us.

We hereby agree to suspend the payments as provided in said agreement from February 1, 1947, until further notice from us and agree to accept during said period in lieu of such suspended payments the following:

It is understood and agreed that this agreement will in no way modify or alter any of the other terms and provisions of said agreement; and the payments provided for therein shall be automatically reinstated upon the expiration of the suspension period herein above provided for.

Please signify your acceptance of the foregoing by signing in the space provided below.

(Removal of Zeon Sign)

Yours very truly, Standard Oil Company of California, by — — ——, Assistant District Manager.

Accepted and Agreed to: Mildred C. Ransom.
Adjustments—Dealer Rental.

GOVERNMENT EXHIBIT NO. 17-B

DEALER AGREEMENT

TBA

March 19, 1945

1. STANDARD OIL COMPANY OF CALIFORNIA, hereinafter called "Company" agrees to sell to Mildred C. Hansen, hereinafter called "Dealer," and Dealer agrees to buy from Company all Dealer's requirements of petroleum products used, sold, or bought to be used or sold, by Dealer at Main and 3rd Streets, Hermiston, Oregon, hereinafter called "said premises". The petroleum products to meet Dealer's requirements hereunder shall be those brands of such products generally sold by Company to its Dealers.

Deliveries shall be made in Company's customary manner. The price Dealer shall pay Company for petroleum products hereunder shall be Company's posted price to its dealers generally at time and place of delivery hereunder for the particular product and type of delivery involved. Terms shall be net cash at time of delivery, except at Company's option.

2. Company agrees to sell or consign to Dealer and Dealer agrees to purchase or receive from Company, and stock and offer for sale, all Dealer's requirements of tires, tubes, and batteries used or sold or bought to be used or sold by Dealer on said premises. The tires, tubes and batteries to be supplied Dealer hereunder shall be those lines supplied by Company from time to time to its dealers generally. Company will deliver to Dealer such other merchandise currently sold by Company that Dealer wishes to handle hereunder, in quantities necessary in opinion of Company to meet Dealer's requirements at said premises. Whether tires, tubes, batteries and other non-petroleum merchandise which Dealer handles hereunder shall be consigned or sold to Dealer shall depend on Company's current policies but Company will allow Dealer the commissions, or the equivalent thereof in differentials below Company's selling price therefor, as set forth in the attached Schedule "A". Company may modify this schedule from time to time. All tires, tubes, and batteries sold or consigned to Dealer hereunder shall be sold by Dealer at not less than Company's authorized retail prices therefor. The proceeds of the sale of consigned merchandise shall be held by Dealer as trustee for Company and paid over to Company upon demand. Dealer shall be responsible for all loss of, or damage to, consigned goods belonging to Company in Dealer's possession.

3. All expenses of the storage, handling, sale and distribution at said premises of products and merchandise consigned or sold to Dealer under this agreement shall be paid by Dealer.

4. The petroleum products covered by this agreement shall be sold by Dealer as the products of Company and only under Company's regular trade-marks or brands for such products and shall not be sold, or offered for sale, at prices lower than Company's authorized retail prices therefor at time and place of sale. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging for gasoline or lubricating oils, it is agreed that the design, size and location of such signs shall be subject to Company's approval.

5. Company shall be excused from making deliveries hereunder while prevented from or hindered in doing so in its customary manner due to causes beyond its control. Whenever such causes require that deliveries of any product or merchandise hereunder be restricted, Company reserves the right to restrict deliveries of such product or merchandise to Dealer proportionately with restrictions on deliveries of such product or merchandise to other comparable

under Company's regular trade-marks or brands for such products and shall not be sold, or offered for sale, at prices lower than Company's authorized retail prices therefor at time and place of sale. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging for gasoline or lubricating oils, it is agreed that the design, size and location of such signs shall be subject to Company's approval.

5. Company shall be excused from making deliveries hereunder while prevented from or hindered in doing so in its customary manner due to causes beyond its control. Whenever such causes require that deliveries of any product or merchandise hereunder be restricted, Company reserves the right to restrict deliveries of such product or merchandise to Dealer proportionately with restrictions on deliveries of such product or merchandise to other comparable dealers in Dealer's vicinity.

6. Dealer shall pay Company for the use of Company's facilities on said premises, as follows:

D.

In advance on the first day of each and every month during the period commencing April 1, 1945, and ending March 31, 1955, the sum of Two and 75/100 Dollars ($2.75).

3961

standing the foregoing, this agreement shall terminate forthwith upon the termination of any lease which Company may have upon the premises covered by this agreement, or upon the termination of any sublease between Dealer and Company covering said premises. Consigned goods in Dealer's possession upon any termination of this contract shall be returned to Company.

10. Dealer is engaged in an independent business and nothing herein shall be construed as reserving to Company any right to control Dealer's conduct in the performance of this agreement. Company reserves no right to control Dealer's employees, all of whom shall be entirely under Dealer's control and direction and he shall be responsible for their actions and omissions. Dealer shall, at his own expense, during the term hereof, maintain full insurance under applicable Workmen's Compensation Laws covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer shall pay and bear all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

11. Dealer shall protect, defend, and hold Company harmless from and against all liability for damage to property (including Dealer's property) or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees on, or in connection with the operation of, said premises.

12. Any tax, or the amount thereof, now or hereafter imposed, levied, or assessed by any governmental authority upon, measured by, incident to, or as a result of the transaction herein provided for, or the transportation, production, or manufacture of the goods, the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for.

13. This agreement shall not be assigned without the prior written consent of Company. The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default or the waiver of any other default hereunder. This agreement shall, as of the commencement date hereof, terminate all prior Dealer Agreements, Distributor Agreements, and Agency Agreements between Dealer and Company respecting said premises.

14. Execution of this agreement by Dealer constitutes an offer which Company may accept by executing this agreement and delivering a duplicate original to Dealer.

Mildred C. Ransom Dealer
Mildred C. Ransom

STANDARD OIL COMPANY OF CALIFORNIA, Company

By W. J. Watson
Attorney in fact.

Mildred C. Ransom Dealer
Mildred C. Ransom

STANDARD OIL COMPANY OF CALIFORNIA, Company

By W. J. Watson
Attorney in fact.

CMM

E. D. Dodson

3961

Dealer's attention is called to the fact that as of the date of this agreement there is a shortage of gasoline and other petroleum products on the Pacific Coast due to the needs of the armed forces and the war effort. Therefore, Company will not be able to, nor shall it be obligated to deliver all the gasoline or other petroleum products required by Dealer as specified in Paragraph 1 of this agreement during the period of such shortage. It is Company's present intention to prorate its available supply of products equitably among its customers (contract or otherwise) during this and other periods of product shortage or whenever due to any of the other causes enumerated in the prevention of performance paragraph of this agreement Company is unable to make deliveries to all such customers. However, Company shall in no way be obligated to thus prorate its available supply and its failure; partial or otherwise, to make deliveries to Dealer shall not be a breach of this agreement, notwithstanding that Company is making deliveries to others. Upon termination of the cause or causes for suspension of deliveries, performance hereunder shall be resumed, but nothing herein shall be construed as extending the term of this agreement.

M C K

SCHEDULE of VOLUME BONUS
ATLAS TIRES, TUBES, BATTERIES and OTHER ACCESSORIES

JANUARY 1, 1948

Provisions of this Schedule subject to change without notice

ANNUAL BONUS ON "NET SALES" OF TIRES, TUBES, BATTERIES AND ACCESSORIES PURCHASED FROM COMPANY

On $	750.00	Net Sales to $	999.99	Net Sales a Bonus of 2%
On	1,000.00	" " "	1,499.99	" " " " " 4%
On	1,500.00	" " "	1,999.99	" " " " " 5%
On	2,000.00	" " "	2,499.99	" " " " " 6%
On	2,500.00	" " "	3,999.99	" " " " " 7%
On	4,000.00	" " "	6,999.99	" " " " " 8%
On	7,000.00	" " "	9,999.99	" " " " " 9%
On	10,000.00	" " "	13,999.99	" " " " " 10%
On	14,000.00	" " "	23,999.99	" " " " " 11%
On	24,000.00	" " "	33,999.99	" " " " " 12%
On	34,000.00	" " "	48,999.99	" " " " " 13%
On	49,000.00	" " "	74,999.99	" " " " " 14%
On	75,000.00	" " "	And over	" " " " " 15%

"Net Sales" on tires, tubes and batteries means net selling price of regular sales, less taxes, commissions and handling allowance. Adjustments are included in "Net Sales" on basis of amount collected less commission or handling allowance. "Net Sales" on accessories means Dealer's cost prices.

Volume Bonus applies to all Accessories except Spark Plugs, Battery Water Servicers, Wheat Paste, Dilectric Vulcanizers and Fuses for some, Ford Shock Link Separators, Windshield Servicers and Dobbripes, and other Equipment Items not resold by Dealers.

2299

7. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on said premises and that they are in good condition, and while this agreement is in force Dealer agrees to so keep them at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities.

8. Company may at any time remove from said premises any equipment or improvements placed thereunder or thereon which are now or hereafter owned by Company.

9. This agreement shall be operative during the period commencing April 1, 1945; and ending March 31, 1955, and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first six months of any contract year, or at the end of any such year, by giving to the other at least thirty days prior thereto written notice of its intention to so terminate this agreement. Notwith-

2297

Dealer Agreement TBA
For use in California, Oregon, Nevada,
Washington, and Arizona.

S-462-TBA (9-60)

2298

1345



JANUARY 1, 1948

Form D-48

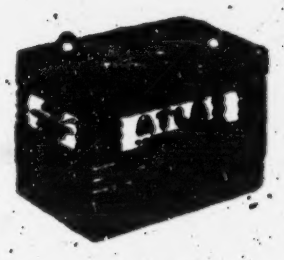
2300

SCHEDULE OF POSTED PRICES

ATLAS

Tires - Tubes - Batteries and other Accessories





Prices and other provisions hereof subject to change without notice

TIRES, TUBES AND BATTERIES

AMOUNTS OF DEALER DISCOUNTS OR COMMISSIONS AND DEALER COSTS OR REMITTANCES.
SELLING PRICES AND DEALER COSTS OR REMITTANCES INCLUDE EXCISE TAXES.
SUCH SELLING PRICES AND COSTS OR REMITTANCES DO NOT INCLUDE SALES TAXES.

JANUARY 1, 1948

ATLAS PASSENGER TIRES

Size	4 PLY List Price	Excise Tax	Selling Price	Dealer Disct. or Comm.	Dealer Cost or Remit.	6 PLY List Price	Excise Tax	Selling Price	Dealer Disct. or Comm.	Dealer Cost or Remit.
650/15	$18.15	$1.26	$19.41	$4.72	$14.69	$23.60	$1.39	$24.99	$ 6.14	$18.85
700/15	20.80	1.44	22.24	5.41	16.83	27.05	1.61	28.66	7.03	21.63
750/15	26.05	1.69	27.74	6.77	20.97	.....	.....	.....	.....	.....
550/16	14.65	.97	15.62	3.81	11.81	19.05	1.13	20.18	4.95	15.23
600/16	15.25	1.18	16.43	3.97	12.46	19.85	1.37	21.22	5.16	16.06
625/650/16	18.50	1.31	19.81	4.81	15.00	24.05	1.50	25.55	6.25	19.30
700/16	21.30	1.51	22.81	5.54	17.27	27.70	1.72	29.42	7.20	22.22
750/16	26.95	1.69	28.64	7.01	21.63	35.05	1.91	36.96	9.11	27.85
525/550/17	15.25	1.12	16.37	3.97	12.40	.....	.....	.....	.....	.....
525/550/18	14.90	1.02	15.92	3.87	12.05	.....	.....	.....	.....	.....
475/500/19	13.65	.91	14.56	3.55	11.01	.....	.....	.....	.....	.....
440/450/21	13.65	.86	14.51	3.55	10.96	.....	.....	.....	.....	.....

ATLAS WHITE/BLACK SIDEWALL PASSENGER TIRES

Size	Ply	List Price	Excise Tax	Selling Price	Dealer Disct. or Comm.	Dealer Cost or Remit.
650/15	4	$ 21.80	$1.26	$ 23.06	$ 5.67	$ 17.39
700/15	4	24.95	1.44	26.39	6.49	19.90
600/16	4	18.30	1.18	19.48	4.76	14.72
625/650/16	4	22.20	1.31	23.51	5.77	17.74
700/16	4	25.55	1.51	27.06	6.64	20.42

ATLAS TRUCK TIRES

Size	Ply	List Price	Excise Tax	Selling Price	Dealer Disct. or Comm.	Dealer Cost or Remit.
700/15	6	30.80	1.73	32.53	7.70	24.83
600/16	6	22.20	1.43	23.63	5.55	18.08
600/17	6	23.95	1.46	25.41	5.99	19.42
600/20	6	24.85	1.85	26.70	6.21	20.49
600/20	8	28.60	2.06	30.66	7.15	23.51
650/16	6	25.70	1.57	27.27	6.43	20.84
650/20	6	29.00	1.85	30.85	7.25	23.60
650/20-32x6	8	36.50	2.06	38.56	9.13	29.43
700/16	6	31.25	1.81	33.06	7.81	25.25
700/17	6	33.70	1.96	35.66	8.43	27.23
700/17	8	36.35	2.14	38.49	9.09	29.40
700/20	8	37.35	2.44	39.79	9.34	30.45
700/20-32x6	10	48.60	2.94	51.54	12.15	39.39
750/16	6	38.85	2.06	40.91	9.71	31.20
750/16	8	42.75	2.19	44.94	10.69	34.25
750/17	8	44.05	2.38	46.43	11.01	35.42
750/20	8	48.45	2.81	51.26	12.11	39.15
750/20-34x7	10	64.50	3.42	67.92	16.13	51.79
750/24-38x7	10	72.35	3.81	76.16	18.09	58.07
825/20	10	66.50	3.94	70.44	16.63	53.81
900/18	10	76.75	4.36	81.11	19.19	61.92
900/20	10	79.40	4.63	84.03	19.85	64.18
900/20-36x8	12	92.95	4.97	97.92	23.24	74.68
900/24-40x8	12	99.30	5.54	104.84	24.83	80.01
1000/20	12	100.65	5.69	106.34	25.16	81.18
1000/22	12	106.05	6.01	112.06	26.51	85.55
1100/20	12	120.75	6.35	127.10	30.19	96.91
1100/22	12	127.75	6.72	134.47	31.94	102.53
1100/22	14	149.20	7.87	156.27	37.30	118.97

2301

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BATTERIES

Type ATLAS	S.A.E. Group Number	List Price (Old Battery Not Turned In)	Net Price (Old Battery Turned In)	Dealer Discount or Commission	Dealer Cost or Remittance
A-1	1M	$17.35	$16.35	$4.91	$11.44
A-2	2L	18.40	17.40	5.22	12.18
A-3	2M	20.30	19.30	5.79	13.51
A-4	3M	24.25	23.25	6.98	16.27
A-5	4M	27.45	26.45	7.94	18.51
A-6	2NE	20.30	19.30	5.79	13.51
A-7	8H	17.45	16.45	4.94	11.51
ATLAS AQ					
AG-1	1M	20.85	19.85	5.96	13.89
AG-2	2L	21.25	20.25	6.08	14.17
JUNIOR ATLAS					
K-1	1M	12.95	11.95	2.99	8.96
K-2	2L	14.55	13.55	3.39	10.16

SEE PAGE NUMBER 17 TO PAGE NUMBER 21 FOR TIRE AND BATTERY WARRANTY AND ADJUSTMENT CHARGES

TIRES, TUBES AND BATTERIES (Cont.)

ATLAS LUG GRIP TRUCK TIRES

Size	Ply	List Price	Excise Tax	Selling Price	Dealer Discount or Commission	Dealer Cost or Remittance
600/16	6	$28.30	$1.57	$29.87	$ 7.08	$22.79
700/20-32x6	10	53.50	2.94	56.44	13.38	43.06

ATLAS PASSENGER TUBES

Size	*List Price	Excise Tax	Selling Price	Dealer Discount or Commission	Dealer Cost or Remittance
650/15 or 650-15/670-15	$3.20	$.30	$3.50	$1.12	$2.38
700/15 or 700-15/760-15	3.40	.30	3.70	1.19	2.51
750/15 or 750-15/820-15	4.00	.39	4.39	1.40	2.99
550/16	2.45	.22	2.67	.86	1.81
600/16 or 600-16/640-16	2.75	.25	3.00	.96	2.04
625/650/16 or 650-16/670-16	3.15	.31	3.46	1.10	2.36
700/16 or 700-16/760-16	3.50	.31	3.81	1.23	2.58
750/16 or 750-16/820-16	4.15	.40	4.55	1.45	3.10
525/550/17 550/18 DC	2.65	.28	2.93	.93	2.00
475/500/19	2.30	.22	2.52	.81	1.71
440/450/21	2.30	.21	2.51	.81	1.70

ATLAS TRUCK TUBES

Size	List Price	Excise Tax	Selling Price	Dealer Discount or Commission	Dealer Cost or Remittance
700/15	$ 4.00	$ .40	$ 4.40	$1.40	$3.00
600/20W	3.95	.33	4.28	1.38	2.90
650/20W	4.45	.42	4.87	1.56	3.31
700/16	3.65	.39	4.04	1.28	2.76
700/17W	4.25	.42	4.67	1.49	3.18
700/20W	5.50	.50	6.00	1.93	4.07
750/16	4.75	.46	5.21	1.66	3.55
750/17W	6.10	.42	6.52	2.14	4.38
750/20W	6.70	.64	7.34	2.35	4.99
ET-24	7.60	.72	8.32	2.66	5.66
825/20W	7.60	.72	8.32	2.66	5.66
900/18	8.80	.83	9.63	3.08	6.55
900/20W	8.85	.88	9.73	3.10	6.63
KT-24	10.15	1.00	11.15	3.55	7.60
1000/20W	9.95	1.07	11.02	3.48	7.54
1000/22W	10.45	1.14	11.59	3.66	7.93
1100/20W	11.20	1.39	12.59	3.92	8.67
1100/22W	12.70	1.41	14.11	4.45	9.66

ACCESSORIES PRICE LIST — JANUARY 1, 1948

Shipments Prepaid Via Regular Delivery Service

COST PRICES ARE NET—NO CASH DISCOUNT

Prices Do Not Include Sales Taxes

Suggested Selling Price Includes Installation Unless Otherwise Noted.

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
ANTI-FREEZE**				
Perma-Guard				
Case lots (6/1's)	$2.65 gal.	$1.74 gal.	6	S
Broken case lots	2.65 "	2.01 "		
Alex				
Type "N"—54 gal. drum	1.75 "	1.19 "	##54 gal.	S
Beaver				
Type "N"—54 gal. drum	1.75 "	1.19 "	##54 gal.	S
ANT CONTROL**				
(Grant's)	1.25 doz.	.85 doz.	##12	48
BATTERY BOLTS AND NUTS	.10 ea.	.36 doz.	Each	24

BATTERY CABLES

No.	Type	Length	Installation Additional			
7-S	Strap	7½"	.80 ea.	.46 ea.	Each	1
9-S	"	9"	.88 "	.50 "	"	3
13-S	"	13½"	1.07 "	.62 "	"	4
16-S	"	16½"	1.17 "	.69 "	"	3
12-C	Insulated	12½"	1.52 "	.88 "	"	4
19-C	"	19"	1.63 "	.96 "	"	4
23-C	"	23½"	1.88 "	1.09 "	"	4
27-C	"	27"	1.95 "	1.12 "	"	2
32-C	"	32"	2.15 "	1.27 "	"	1
38-C	"	38"	2.25 "	1.35 "	"	2
48-C	"	48"	2.50 "	1.53 "	"	2
58-C	"	58"	2.95 "	1.76 "	"	1
71-C	"	71"	4.20 "	2.54 "	"	1
18-SS	Switch to Starter	18"	1.35 "	.80 "	"	2

BATTERY SHIMS	—	.38 box 25	##25	25
BATTERY WATER SERVICER (Includes hydrometer and syringe. (No replacements available on hydrometer or syringe.)	.....	4.75 ea.	Each	1

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
BONDING CEMENT				
(2 oz.)	$ .27 ea.	$2.04 ctn. 12	12	12
(Pint)	.74 pt.	2.88 " 6	6	6
BRAKE FLUID				
Pint	.85 pt.	6.12 ctn. 12	12	6
Quart**	1.60 qt.	11.52 ctn. 12	12	6
Gal.	.....	3.42 gal.	Each	2
5 Gal. Drum**	—	3.27 "	"	1
CAR COOLERS**	14.90 ea.	11.15 ea.	Each	S

CAR HEATERS, HEATER DEFROSTERS AND HEATER HOSE	Installation Additional			
Car Heaters**				
(Atlas Regal)	25.55 ea.	15.30 ea.	Each	1
Defrosters		1 to 7 / 8 or More		
No. D-1542		Each		1
" D-1742				1
" D-1842	5.00 ea.	3.75 3.00	"	1
" D-2642				1
" D-2942				1
" D-2842	2.00 "	1.50 1.20	"	1
Heater Hose	.30 per ft.	.13 per ft.	50-Ft. Roll	1 Roll

DOOR EASE				
Universal (Stick)	.10 ea.	.80 ctn. 12	##12	12
Shop Size	—	1.35 box 6	## 6	6

NOTE: Suggested stock is for average dealer—may be increased or decreased in accordance with sales requirements.

Items so marked in "Standard Package" column may not be purchased in less than full standard packages shown.

S in Suggested Stock column indicates supply should be carried in line with seasonal needs.

** Dependent on stock being available. Will not be back-ordered.

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ACCESSORIES PRICE LIST (Cont.)

Prices Do Not Include Sales Taxes

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
FAN BELTS	Installation Additional			
No. 602	$1.49 ea.	$ .82 ea.	Each	2
" 604	1.55 "	.85 "	"	1
" 607	1.86 "	1.02 "	"	1
" 608	1.36 "	.75 "	"	4
" 610	1.98 "	1.09 "	"	1
" 611	1.79 "	.98 "	"	2
" 614	1.98 "	1.09 "	"	2
" 625	2.66 "	1.46 "	"	1
" 626	2.97 "	1.63 "	"	2
" 628	1.86 "	1.02 "	"	4
" 635	2.05 "	1.13 "	"	2
" 637	1.79 "	.98 "	"	4
" 639	1.49 "	.82 "	"	3
" 646	2.48 "	1.36 "	"	1
" 647	1.67 "	.92 "	"	1
" 650	1.79 "	.98 "	"	3
" 652	1.98 "	1.09 "	"	1
" 656	2.72 "	1.50 "	"	2
" 657	2.05 "	1.13 "	"	2
" 658	1.67 "	.92 "	"	1
" 659	1.49 "	.82 "	"	1
" 661	1.36 "	.75 "	"	2
" 663	2.72 "	1.50 "	"	2
" 664	1.79 "	.98 "	"	2
" 665	2.72 "	1.50 "	"	1
" 666	2.66 "	1.46 "	"	2
" 667	1.79 "	.98 "	"	1
" 668	1.79 "	.98 "	"	2
" 669	1.61 "	.89 "	"	3
" 670	.80 "	.44 "	"	1
" 671	1.17 "	.64 "	"	1
" 672	1.36 "	.75 "	"	2
" 673	1.67 "	.92 "	"	2
" 674	1.36 "	.75 "	"	3
" 675	1.98 "	1.09 "	"	3
" 676	2.78 "	1.53 "	"	1
FLAPS				
Drop-Center 1,	.24 ea.	.15 ea.	12	4
FLASHLIGHTS				
Usalite Ang-122	1.35 ea.	.90 ea.	Each	---
FLASHLIGHT CELLS	.10 ea.	.78 doz.	24	24

ITEM	Suggested Selling Price	Dealer's Cost		Standard Package	Suggested Stock (See Note)
			Replacements		
		Ea.	Box 5 1 Size		
FLEXIBLE FUEL LINES					
Assortment No. A-2		$15.71 asst.		Each	1
(Including all-metal display rack)					
Assortment consists of following:	Installation Additional				
9 A-191 HD Lines	$ .78 ea.	$ .49	$2.35	5	9
3 A-151 Lines	.81 "	.51	2.45	"	3
3 A-150 "	.95 "	.59	2.85	"	3
1 A-155 "	.95 "	.59	2.85	"	1
1 A-180 "	.95 "	.59	2.85	"	1
1 A-130 "	.87 "	.54	2.60	"	1
3 A-281 "	.81 "	.51	2.45	"	3
1 A-152 "	.95 "	.59	2.85	"	1
2 A-303 "	.81 "	.51	2.45	"	2
1 A-251 "	.87 "	.54	2.60	"	1
2 A-252 "	.81 "	.51	2.45	"	2
2 A-154 "	.95 "	.59	2.85	"	2
1 A Repair Section	.79 "	.49	2.35	"	1
1 B " "	.93 "	.58	2.80	"	1
FUSES (Buss)					
AGA-2 (formerly 1AG-2)	.30 box 5	.18 box 5		##5	20
AGA-3 (" 1AG-3)	.30 " "	.18 " "		##5	20
SFE-4	.30 " "	.13 " "		##5	20
AGA-6 (" 1AG-6)	.30 " "	.13 " "		##5	20
SFE-6	.30 " "	.13 " "		##5	20
SFE-9	.30 " "	.12 " "		##5	20
SFE-14	.30 " "	.12 " "		##5	20
AGC-15 (" 3AG-15)	.30 " "	.12 " "		##5	20
SFE-20	.30 " "	.12 " "		##5	25
AGC-30 (formerly 3AG-30)	.30 " "	.15 " "		##5	25
SFE-30	.30 " "	.15 " "		##5	15
GASKET CEMENT					
(2 oz.)	.15 ea.	1.04 doz.		36	12

NOTE: Suggested Stock is for average dealer—may be increased or decreased in accordance with sales requirements.

Items so marked in "Standard Package" column may not be purchased in less than full standard packages shown.

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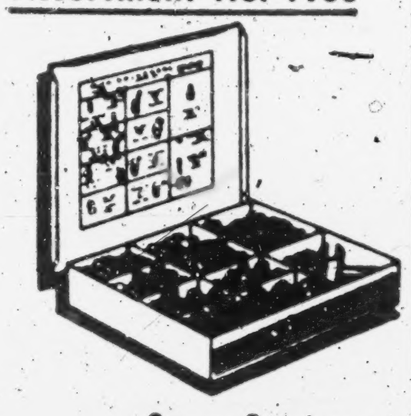
2304

ACCESSORIES PRICE LIST (Cont.)

Prices Do Not Include Sales Taxes

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
GAS TANK CAPS				
Atlas Fender Well "A" & "B"	$ .29 ea.	$ .90 ctn. 6	6	6
Atlas Regular "A"	.40 "	1.44 " "	"	6
Atlas Regular "B"	.40 "	1.44 " "	"	6
		1 to 11 / 12 or more — Each		
Defiance Keyless Locking	2.69 "	1.79 1.61	12	6
Atlas Locking "A"**	1.65 "	6.18 ctn. 6	6	6
Atlas Locking "B"**	1.65 "	6.18 " "	"	6
Ivano Locking "A"**	1.99 "	7.62 " "	"	6
Ivano Locking "B"**	1.99 "	7.62 " "	"	6
GLAS-KLEEN AND WINDSHIELD SERVICE PROGRAM				
Glas-Kleen				
(8 oz.)	.20 ea.	1.50 doz.	24	24
(Gal.)	1.50 gal.	3.60 ctn. 4	4	4
Sprayers (for 8 oz.)	.16 ea.	1.56 doz.	24	24
Windshield Servicer				
(B-12 cabinet & bracket)	.....	7.26 ea.	Each	1
Plastic Ice & Bug Scrapers (1 Free to Dealers with purchase of B-12 Cabinet)	.20 ea.	Additional Quantities 1.44 doz.	Bulk	12
No. 350 Dublwipes	----	6.70 ea. 2400	##2400	2400
GLASSES, SUN (Polaroid)				
For Men				
F-9007-S (Brown, Paddle Temple)	1.69 ea.	1.13 ea.	12	12
F-9007-C (Brown, Cable Temple)	1.69 ea.	1.13 ea.	12	12
For Women				
9009 (Ivory, red, blue, brown or green)	1.69 ea.	1.13 ea.	12	12

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
GLOBES (Westinghouse) (Prices Include Excise Tax)				
Flashlight No. 13	$ .10 ea.	$ .50 box 10	10	10
" " 14	.10 "	.50 " "	"	10
" " PR-6	.13 "	.80 " "	"	10
Auto " 51	.15 "	.50 " "	"	10
" " 55	.15 "	.50 " "	"	10
" " 63	.17 "	.60 " "	"	20
" " 67	.20 "	.80 " "	"	10
" " 1000	.37 "	1.60 " "	"	10
" " 1129	.35 "	1.40 " "	"	10
" " 1154	.38 "	1.70 " "	"	10
" " 1158	.35 "	1.60 " "	"	10
" " 2330	.46 "	2.30 " "	"	20
" " 2331	.46 "	2.30 " "	"	10
" " 2336	.46 "	3.10 " "	"	10
Sealed Beam 4030	1.32 "	.78 ea.	##4	4
" " 4430	1.70 "	1.02 "	##4	4
GREASE FITTINGS (Universal)				
Assortment No. 1150	----	10.64 assort.	Each	1



Super Service Station Stock Consists of:

1 Set Reversible Coupler Jaws
10 1/8"-1/4" Pipe Th. Bushings
1 Grease Fitting Tool
15 Fittings, No. 400
2 " No. 401
10 " No. 460
2 " No. 461
4 " No. 502
4 " No. 600
50 " No. 800
10 " No. 860
10 " No. 861
10 " No. 862
10 " No. 863

NOTE: Suggested stock is for average dealer—may be increased or decreased in accordance with sales requirements.
** Dependent on stock being available. Will not be back-ordered.

Items so marked in "Standard Package" column may not be purchased in less than full standard packages shown.

ACCESSORIES PRICE LIST (Cont.)

Prices Do Not Include Sales Taxes

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
GREASE FITTINGS (Universal) (Cont.)				
Replacements				
¼" 28 Taper Thread				
 No. 400 Short Ball Check 19/32" Overall	$ .16 ea.	$ .59 box 12	##12	12
 No. 401 Long Ball Check 11/16" Overall	.16 "	.77 box 12	##12	12
 No. 450 45° Angle Short, Ball Check 29/32" Overall	.16 "	1.16 box 12	##12	12
 No. 451 45° Angle Long, Ball Check 1-1/32" Overall	.16 "	1.25 box 12	##12	12
5/16" Drive Type				
 No. 501 No Ball Check 19/32" Overall	.16 "	.42 box 12	##12	12
Ford Spring				
 No. 502 5/16" 24 Ball Check Front Spring 23/32" Overall	.16 "	.83 box 12	##12	12
 No. 600 ⅜" 24 Ball Check Rear Spring 29/32" Overall	.16 "	.83 box 12	##12	12
⅛" Pipe Thread				
 No. 300 Ball Check 23/32" Overall	.16 "	.50 box 12	##12	12
 No. 850 30° Angle Ball Check 1-3/16" Overall	.16 "	1.00 box 12	##12	12
 No. 851 45° Angle Ball Check 1-5/32" Overall	.16 "	1.00 box 12	##12	12
 No. 852 67½° Angle Ball Check 1" Overall	.16 "	1.00 box 12	##12	12
 No. 853 90° Angle Ball Check ⅞" Overall	.16 "	1.00 box 12	##12	12

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
MAGNETIC PLUGS (Lisle)				
Assortment 51 Plugs		$ 4.28 assort.	Each	1 assort.
Replacements:				
No. 2	$ .65 ea.	.28 ea.	15	9
2X				6
3				8
10				4
11*				4
27				4
31				3
43				6
51				4
77				3

*Plug No. 11 not included in assortment.

MARKING CRAYONS	—	.70 box 12	##12	12

OIL FILTERS							
					1 to 3 (Any combination on one order) each	4 or more each	
(Passenger Cars)							
New	**Old**						
P-3	A-3			3.72 ea.	2.23	1.92	Each 2
P-709	NE-1517			5.97 "	4.22	3.63	" 3
.....	N-15			1.28 "	.91	.78	" 5
.....	N-16			1.43 "	1.01	.87	" 1
.....	N-21			1.79 "	1.27	1.09	" 1
P-70FR	N-33			1.38 "	.98	.84	" 1
P-34	N-34			1.63 "	1.15	.99	" 3
P-34-S	N-34-S			1.63 "	1.15	.99	" 2
P-37	N-37			1.63 "	1.15	.99	" 2
P-70	.....			1.38 "	.98	.84	" 2
P-70-AC	.....			1.38 "	.98	.84	" 2
P-82	.....			1.94 "	1.37	1.18	" 2
(Trucks)					**Any quantity**		
Replacement Element		T-1		1.58 ea.	.96 ea.		Each 1
"	"	T-2		1.63 "	.99 "		" 2
"	"	T-3		1.73 "	1.05 "		" 1
"	"	T-4		1.84 "	1.12 "		" 1
"	"	T-5		2.35 "	1.43 "		" 1
"	"	N-35		2.14 "	1.30 "		" 1
"	"	N-36		1.73 "	1.05 "		" 1

(Oil Filters Continued on Next Page.)

Items so marked in "Standard Package" column may not be purchased in less than full standard packages shown.

NOTE: Suggested stock is for average dealer—may be increased or decreased in accordance with sales requirements.

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ACCESSORIES PRICE LIST (Cont.)

Prices Do Not Include Sales Taxes

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
OIL FILTERS (Cont.)				
(Tractors)				
Replacement Element T-6	$1.20 ea.	$ .72 ea.	Each	1
" " T-10	1.70 "	1.02 "	"	2
" " T-12	1.30 "	.78 "	"	1
" " T-15	1.20 "	.72 "	"	1
" " T-20	1.50 "	.90 "	"	1
" " T-109	1.20 "	.72 "	"	1
Oil Filter Kits	Installation Additional Per Kits			
New **Old**				
428 396	9.18 ea.	5.58 ea.	Each	2
429 397	9.44 "	5.74 "	"	2
430 376	9.95 "	6.05 "	"	2
435	9.95 "	6.05 "	"	2
436	9.95 "	6.05 "	"	2
(Prices Include Excise Taxes)				
PASTE, WHEAT (For Applying Posters) (2-lb. pkg.)	.....	.39 ea.	Each	1
PIB (Liquid Insulation, Atlas)	Service Chge. Additional			
(1 oz.)	.75 ea.	5.40 ctn. 12	12	12
(4 oz.)	1.50 "	5.40 " 6	6	6
RADIATOR CAPS				
Atlas R-1, R-3	.29 ea.	.84 ctn. 6	6	12
" R-2, R-4	.29 "	.84 " "	6	6
EvrSeal Pressure R-5	.92 "	3.36 six	Each	6
" " R-6				6
" " R-7				6
RADIATOR CLEANER (Warner)	.69 ea.	4.92 ctn. 12	12	12
RADIATOR PROTECTOR (Warner)	.58 ea.	3.96 doz.	24	12
RADIATOR STOP LEAK (X-Liquid) (8 oz.)	.52 ea.	3.84 doz.	24	12

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
RADIATOR HOSE				
Regular	Installation Additional			
1 Inch—3 Ft. Length	$ .62 per Ft.	$ .31 per Ft.	## 3 Ft.	1
1⅛ " "	.68 " "	.34 " "	##" "	1
1¼ " "	.73 " "	.35 " "	##" "	2
1⅜ " "	.78 " "	.40 " "	##" "	1
1½ " "	.90 " "	.45 " "	##" "	2
1⅝ " "	.97 " "	.49 " "	##" "	1
1¾ " "	.98 " "	.49 " "	##" "	1
2 " "	1.12 " "	.57 " "	##" "	1
2¼ " "	1.28 " "	.65 " "	##" "	1
Molded Curve	Installation Additional			
MC-100—Per Piece	.93 ea.	.65 ea.	Each	1
MC-104— " "	1.19 "	.79 "	"	1
MC-105— " "	1.38 "	.92 "	"	2
MC-106— " "	.93 "	.57 "	"	1
MC-107— " "	1.32 "	.87 "	"	1
MC-109— " "	1.32 "	.87 "	"	1
MC-110— " "	1.26 "	.84 "	"	3
MC-111— " "	.73 "	.43 "	"	2
MC-112— " "	1.26 "	.77 "	"	1
MC-113— " "	1.32 "	.88 "	"	1
MC-114— " "	.93 "	.65 "	"	2
MC-115— " "	1.32 "	.88 "	"	1
MC-116— " "	.85 "	.55 "	"	1
MC-117— " "	.85 "	.55 "	"	2
MC-118— " "	.85 "	.55 "	"	1
MC-119— " "	1.78 "	1.04 "	"	3
MC-120— " "	1.25 "	.77 "	"	3
MC-122— " "	.93 "	.65 "	"	1
MC-125— " "	1.32 "	.88 "	"	1
MC-127— " "	1.38 "	.85 "	"	2
MC-131— " "	.99 "	.59 "	"	1
MC-132— " "	.93 "	.65 "	"	2
MC-133— " "	.79 "	.48 "	"	1
MC-134— " "	.99 "	.65 "	"	1
MC-135— " "	.79 "	.55 "	"	1
MC-136— " "	.93 "	.65 "	"	2
MC-137— " "	.93 "	.65 "	"	1
MC-138— " "	.93 "	.65 "	"	1
MC-139— " "	1.19 "	.73 "	"	2
MC-140— " "	1.38 "	.92 "	"	1
MC-141— " "	.99 "	.60 "	"	1
MC-143— " "	1.38 "	.90 "	"	2
MC-147— " "	.73 "	.48 "	"	1
MC-148— " "	1.32 "	.88 "	"	1
MC-149— " "	1.38 "	.92 "	"	2

NOTE: Suggested stock is for average dealer—may be increased or decreased in accordance with sales requirements.

Items so marked in "Standard Package" column may not be purchased in less than full standard packages shown.

ACCESSORIES PRICE LIST (Cont.)

Prices Do Not Include Sales Tax

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
RADIATOR HOSE CLAMPS				
Aero-Seal **Fits**				
 No. M-20S 1" -1¼"	$ .29 ea.	$ .17 ea.	50	10
" M-24S 1¼"-1½"	.29 "	.17 "	"	"
" M-28S 1¼"-1¾"	.30 "	.18 "	"	"
" M-32S 1½"-2"	.30 "	.18 "	"	"
" M-40S 2" -2½"	.32 "	.19 "	"	"
Wire-Grip				
 No. 158 1¼"	.12 ea.	.72 box 10#	#10	10
" 134 1⅜"				10
" 178 1½"-1⅝"				10
" 218 1¾"				10
" 238 2"				10
SEAT COVERS	Installation Additional			
Universal Plaid Fiber				
Order on Accessory Warehouse in regular manner.				
Size Number				
702	8.25 set	5.13 set	1 set	
710F	11.60 "	7.19 "	" "	
712F	11.60 "	7.19 "	" "	
713F	11.60 "	7.19 "	" "	
714F	11.90 "	7.40 "	" "	
‡710	19.95 "	12.39 "	" "	2
‡712	19.95 "	12.39 "	" "	2
‡713	19.95 "	12.39 "	" "	2
714	20.90 "	12.98 "	" "	
720F	11.95 "	7.41 "	" "	
722F	11.95 "	7.41 "	" "	
723F	11.95 "	7.41 "	" "	
724F	11.95 "	7.41 "	" "	
725F	11.95 "	7.41 "	" "	
‡720	19.95 "	12.39 "	" "	2
‡722	19.95 "	12.39 "	" "	2
‡723	19.95 "	12.39 "	" "	2
724	20.90 "	12.98 "	" "	
725	23.20 "	14.40 "	" "	
A-76 (Door Scuff Pad, Red)	2.50 pr.	1.54 pr.	12 pr.	

‡These sizes suggested for Station stock.

Tailor Made

Available only on special order. Place order on Accessory Warehouse using Accessory Order Form S-623-A.

Specify whether red or blue plaid desired.

14 sizes marked * below, available in red only, at a central point on this coast. Shipments will be made directly upon receipt of your order.

Balance of red plaid sizes and all sizes in blue plaid will be shipped directly from Eastern factory on your order. Delivery at least 30 days.

Size Number			
31F	15.50 set	9.66 set	1 set
34	22.00 "	13.70 "	" "
34F	14.50 "	9.03 "	" "
35F	15.50 "	9.66 "	" "

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
Seat Covers (Cont.)				
Tailor Made (Cont.)				
Size Number	Installation Additional			
*36	$23.50 set	$14.64 set	1 set	
*37	22.00 "	13.70 "	" "	
38	23.50 "	14.64 "	" "	
39	29.00 "	18.05 "	" "	
40	29.00 "	18.05 "	" "	
41	29.00 "	18.05 "	" "	
*42	22.00 "	13.70 "	" "	
*43	23.50 "	14.64 "	" "	
*44	23.50 "	14.64 "	" "	
45	29.00 "	18.05 "	" "	
*46	23.50 "	14.64 "	" "	
47	29.00 "	18.05 "	" "	
48	14.50 "	9.03 "	" "	
50	22.00 "	13.70 "	" "	
51	22.00 "	13.70 "	" "	
52	22.00 "	13.70 "	" "	
56	23.50 "	14.64 "	" "	
56F	15.50 "	9.66 "	" "	
57	23.50 "	14.64 "	" "	
58	23.50 "	14.64 "	" "	
59	29.00 "	18.05 "	" "	
*70	23.50 "	14.64 "	" "	
71	29.00 "	18.05 "	" "	
79	29.00 "	18.05 "	" "	
81	23.50 "	14.64 "	" "	
82	23.50 "	14.64 "	" "	
83	23.50 "	14.64 "	" "	
83F	15.50 "	9.66 "	" "	
84	29.00 "	18.05 "	" "	
85	29.00 "	18.05 "	" "	
86	29.00 "	18.05 "	" "	
90	22.00 "	13.70 "	" "	
90F	14.50 "	9.03 "	" "	
*91	22.00 "	13.70 "	" "	
*92	22.00 "	13.70 "	" "	
*95	22.00 "	13.70 "	" "	
*96	22.00 "	13.70 "	" "	
97	22.00 "	13.70 "	" "	
*98	23.50 "	14.64 "	" "	
99	29.00 "	18.05 "	" "	
100	23.50 "	14.64 "	" "	
100F	15.50 "	9.66 "	" "	
102	23.50 "	14.64 "	" "	
103	29.00 "	18.05 "	" "	
*105	22.00 "	13.70 "	" "	
*106	22.00 "	13.70 "	" "	
109	23.50 "	14.64 "	" "	
110	29.00 "	18.05 "	" "	
112	23.50 "	14.64 "	" "	
113	29.00 "	18.05 "	" "	
120	23.50 "	14.64 "	" "	
120F	15.50 "	9.66 "	" "	

(Seat Covers Continued on Next Page.)

NOTE: Suggested Stock is for Average Dealer—May be increased or decreased in accordance with sales requirements.

##Items so marked in "Standard Package" column may not be purchased in less than full standard packages shown.

Prices Do Not Include Sales Taxes

SEAT COVERS (Cont.)

Tailor Made (Cont.)

Item	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
Size Number	Installation Additional			
121	$23.50 set	$14.64 set	1 set	
122	23.50 "	14.64 "	" "	
123	23.50 "	14.64 "	" "	
124	23.50 "	14.64 "	" "	
125	23.50 "	14.64 "	" "	
126	23.50 "	14.64 "	" "	
127	29.00 "	18.05 "	" "	
128	29.00 "	18.05 "	" "	
130	23.50 "	14.64 "	" "	
130F	15.50 "	9.66 "	" "	
131	29.00 "	18.05 "	" "	
135	23.50 "	14.64 "	" "	
136	29.00 "	18.05 "	" "	
140	15.50 "	9.66 "	" "	
141	23.50 "	14.64 "	" "	
142	29.00 "	18.05 "	" "	
143	23.50 "	14.64 "	" "	
144	23.50 "	14.64 "	" "	
144F	15.50 "	9.66 "	" "	
145	29.00 "	18.05 "	" "	
146	29.00 "	18.05 "	" "	
147	23.50 "	14.64 "	" "	
149	25.00 "	15.55 "	" "	
151	23.50 "	14.64 "	" "	
A-77 (Door Scuff Pad, Blue)	2.50 pr.	1.54 pr.	12 pr.	

SHOCK ABSORBERS AND CONVERSION PACKAGES (Monroe)

Shock Absorbers

Item	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
No. K-11030				1
" K-11083				1
" K-11070				3
" K-11125				2
" K-11148				4
" K-11149				4
" K-11163**				2
" K-11179				2
" K-11183				2
" K-11184				2
" K-11186	Installation Additional			3
" K-11188	5.60 ea.	3.64 ea.	Each	2
" K-11189**				2
" K-11401				1
" K-11409				1
" K-11431				2
" K-11432				2
" K-11433				1
" K-11435				2
" K-11436				1
" K-11473				1
" K-11474				2
" K-11475				2
" K-11476				2

SHOCK ABSORBERS & CONVERSION PACKAGES (Cont.)

Conversion Pkgs. (Pair)

Item	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
No. 13001				3
" 13002				3
" 13003				3
" 13004				1
" 13005				1
" 13006				4
" 13007				1
" 13009				1
" 13011				1
" 13013				2
" 13014	Installation Additional			1
" 13015	$18.15 pkg.	$13.95 pkg.	Each	1
" 13016				1
" 13017				2
" 13018				1
" 13019				2
" 13021				1
" 13022				2
" 13023				1
" 13024				2
" 13025				4
" 13026				4
" 13027				1
" 13028				2

Fluid

Item	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
Regular (Gal.)	—	1.14 gal.	4	3
Rotary Type (Gal.)	—	3.09 "	4	1

Grommet Sets

Item	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
No. 1 (Includes 16 No. 10687-A Grommets)	1.60 set (.10 ea.)	1.04 set	12	3
No. 2 (Includes 12 No. 10671 Grommets and 4 No. 960 Cushions)	1.40 set	.91 "	12	1
Grommets	(.10 ea.)			
Cushions	(.06 ea.)			
No. 3 (Includes 8 No. 10671 Grommets and 8 No. 960 Cushions)	1.20 set	.78 "	12	1
Grommets	(.10 ea.)			
Cushions	(.06 ea.)			
No. 4 (Includes 16 No. 960 Cushions)	.80 set (.06 ea.)	.52 "	12	2
No. 7 (Includes 8 No. 11866 Grommets)	1.20 set (.15 ea.)	.78 "	12	1
No. 8 (Includes 4 No. 12513 Grommets)	.40 set (.10 ea.)	.26 "	12	2

NOTE: Suggested Stock is for average dealer—may be increased or decreased in accordance with sales requirements.

** Dependent on stock being available. Will not be back-ordered.

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ACCESSORIES PRICE LIST (Cont.)

Prices Do Not Include Sales Taxes

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
SHOCK ABSORBERS & CONVERSION PACKAGES (Cont.)				
Reserve Tube Gasket	$1.25 pkg. (.05 ea.)	$ .81 pkg.	**25	25
Service Kit	—	12.45 ea.	Each	1
Includes—1 Gal. Regular Fluid, 1 Gal. Rotary Fluid, Filler Can, Measuring Cup, 5 Wrenches, Offset Screwdriver, Plugs, Gaskets, Instruction Cards, Advertising Material.				
Ford Shock Link Separator No. X-51	.....	2.40 ea.	Each	1
SKIN PROTECTOR AND CLEANER (Frecti-Kreme)**				
(16 oz.)	.59 ea.	3.60 ctn. 12	12	12
SPARK PLUGS (Champion) (Earn credit for boxes rate only)				
J-8				50
J-7 (Formerly J-9)				50
J-11 (Formerly J-5)				30
J-12 (Formerly J-4)				10
H-10				20
C-4		10 to 99		10
C-7	1 to 3	3.82 box 10		10
No. 7	.65 ea.			30
No. 15-A		100 to 299		10
Y-4A	4 or	3.53 box 10	10	10
Y-6	more			20
Y-8	.59 ea.	300 or more		10
H-9 Com.		3.14 box 10		10
6-Com-62				10
J-6 (Formerly J-10 Com.)				10
1-Com.				10
O-Com.				10
3-Com.				10
8-Com.				10

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
SPARK PLUGS (Champion) (Cont.)				
Spark Plug Gasket Vendor (With 200 Gaskets)	—	$1.40 ea.	1	1
Replacement Gaskets				
10 MM				
14 MM	$ .01 ea.	.60 pkg. 100	**100	100
18 MM				
⅞ Inch				
Abrasive Compound for Spark Plug Cleaner				
2½ Lb. Can	.....	3.00 ctn. 6	6	6
TAPE, FRICTION (2 oz.)	.19 ea.	1.37 ctn. 12	**12	12
TIRE CHAINS (Weed)**				
6.00-16, 6.00-15 Lt. Car Spec.				
Bar Reinforced	8.10 pr.	5.39 pr.	Each	s
Regular	6.95 "	4.62 "	"	s
6.00-16, 6.50-15				
Bar Reinforced	8.90 "	5.92 "	"	s
Regular	7.75 "	5.15 "	"	s
6.00-17, 6.50-16				
Bar Reinforced	9.50 "	6.32 "	"	s
Regular	8.20 "	5.45 "	"	s
7.00-16, 7.50-15				
Bar Reinforced	9.85 "	6.55 "	"	s
Regular	8.55 "	5.69 "	"	s
TIRE CROSS CHAINS (Weed)**				
6.00, 6.50				
Bar Reinforced	.205 ea.	.135 ea.	100	s
Regular	.165 "	.11 "	100	s
7.00, 7.50				
Bar Reinforced	.25 "	.165 "	100	s
Regular	.19 "	.125 "	100	s
VALVE CAPS (Dill)				
No. 643	.05 ea.	1.70 box 100	**100	100
No. 6241 (Easyflate)	.15 "	.44 " 4	** 4	40
VALVE INSIDES (Dill)	.30 box 5	.20 box 5	** 5	25
WATER BAG	1.89 ea.	1.25 ea.	Each	s

NOTE: Suggested stock is for average dealer—may be increased or decreased in accordance with sales requirements.

" Dependent on stock being available. Will not be back-ordered.

** Items so marked in "Standard Package" column may not be purchased in less than full standard packages shown.

S In Suggested Stock column indicates supply should be carried in line with seasonal needs.

2310

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ACCESSORIES PRICE LIST (Cont'd)

Prices Do Not Include Sales Taxes

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
WHITE SIDEWALL RINGS				
Models No. 1 and 2				
(16"—with black inner ring)				
(Each)	$2.10 ea.	-------	-------	-------
(Set of 4)	6.95 Set	$4.87 Set	# # Set	3 Sets
De Luxe Model				
(15"—with stainless steel inner ring)				
(Each)	2.95 ea.	-------	-------	-------
(Set of 4)	9.95 Set	6.97 Set	# # Set	2 Sets
WINDSHIELD WIPER BLADES AND ARMS				
Display Card Assortment 432		4.86 assort.	Each	1
Consists of:				
4 8¼" Blades	Suggested Selling Prices for Individual Arms and Blades Are Shown Below			
4 9" "				
2 10" "				
2 No. 5 Arms				
2 No. 6 "				
Cabinet Assortment 1398		14.64 assort.	Each	1
Consists of:				
2 7¼" Blades				
10 8¼" "				
10 9" "				
10 10" "				
2 11" "				
4 No. 5 Arms				
4 No. 6 "				
2 No. 7 "				
Wiper Arms				
Type 5	$ .90 ea.	5.40 ctn. 10	10	10
" 6	.90 "	5.40 " "	"	10
" 7	.90 "	5.40 " "	"	10
Wiper Blades				
7½"	.45 ea.	2.70 ctn. 10	10	10
8½"	.45 "	2.70 " "	"	20
9"	.45 "	2.70 " "	"	10
10"	.45 "	2.70 " "	"	10
11"	.50 "	3.00 " "	"	10

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
CAR FINISH PRODUCTS				
AUTO POLISH (Atlas)	$ .69 pt.	$2.10 ctn. 6	6	6
CARNU (Johnson's)	.69 pt.	5.52 ctn. 12	12	12
CHROMIUM POLISH				
(8 oz.)	.45 ea.	3.12 doz.	24	12
MAC'S SUPER GLOSS PRODUCTS		1 to 11 / 12 or more (See Note)		
		Each		
Mac's It Kits	1.85 ea.	1.11 1.02	12	12
(Contains 1-4 oz. Glaze and 1-1 P.. Spec. Cleaner)				
Mac's It Glaze				
(4 oz.)	1.00 ea.	.67 .60	12	12
Mac's Special Cleaner				
(Pint)	.85 pt.	.57 .51	12	12
Mac's Mild Blend Special Cleaner				
(Pint)	.85 pt.	.57 .51	12	12
Mac's Heavy Duty Polish				
(Pint)	.85 pt.	.57 .51	12	12

NOTE: The "12 or More" Schedule of dealers' costs applies on combinations of 12 or more of any Mac's Super Gloss Products on one order.

NOTE: Suggested Stock is for average dealer—may be increased or decreased in accordance with sales requirements.

Items so marked in "Standard Package" column may not be purchased in less than full standard packages shown.

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ACCESSORIES PRICE LIST (Cont.)

Prices Do Not Include Sales Tax

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
POLISHING BAGS**	$ .10 ea.	$ .75 ctn. 12	12	12
POLISHING CLOTHS	.48 ea.	3.60 ctn. 12	12	12
SIMONIZ				
Wax (7 oz.)	.66 ea.	5.28 doz.	24	12
Liquid Kleener (20 oz.)	.66 "	5.28 "	24	12
Paste " (12 oz.)	.66 "	5.28 "	24	12
X-KARWASH				
(Pint)	.98 pt.	6.84 doz.	24	12
Case Lots (4/1's) Per Gal.	—	2.28 gal.	4	—
Broken Case Lots, Per Gal.	—	2.80 "	—	—

TIRE AND TUBE REPAIR MATERIAL

DILLECTRIC				
Vulcanizer No. 6666	—	4.50 ea.	Each	1
Fuse for Vulcanizer	—	.30 box 5	#F 5	5
Patches, Truck No. 6608	—	1.01 box 25	#P25	25
" Round No. 6611	—	1.70 box 50	#P50	50
" Oval No. 6612	—	1.75 box 50	#P50	50
Valve Stems (Short) No. 1418	—	3.60 box 10	#P10	10
" (Med.) No. 1420	—	3.60 box 10	#P10	10
" (Long) No. 1422	—	3.60 box 10	#P10	—

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
RU-GLYDE RUBBER LUBRICANT (For tire mounting)				
Gal.	—	1.95 ea.	4	1
8 oz.	$ .50 ea.	4.00 ctn. 12	##12	12
TIRE DRESSING BLACK				
(Gal.)	.....	1.25 ea.	4	1
TIRE PATCHES				

Atlas Tech. Non-Abrasion

		Repairs to	Installation Additional			
R (REGULAR)	No. 0	¾"	.36 ea.	.12 ea.	24	12
	" 1R	1½"	.46 "	.18 "	24	6
	" 1S	1½"	.46 "	.18 "	24	4
	" 2R	2½"	.60 "	.27 "	24	6
	" 2S	2½"	.60 "	.27 "	24	4
	" 3R	3½"	.75 "	.37 "	12	4
S (SIDE)	" 3S	3½"	.75 "	.37 "	12	4
	" 4R Truck	4½"	1.15 "	.54 "	12	4
	" 4S "	4½"	1.15 "	.54 "	12	4
	" 6R "	6½"	2.25 "	1.18 "	12	4
	" 6S "	6½"	2.25 "	1.18 "	12	4
Atlas Tech. Non-Abrasion Nail Hole Repair Unit			.15 "	.06 "	100	12

Gum Coated***	Installation Additional			
3-G (6")	.35 ea.	.20 ea.	25	10
3-GS (7")	.35 "	.25 "	25	10
TIRE TALC (5 oz.)	—	1.20 ctn. 6	6	6

Figure 73

Items to be stocked in "Standard Package" column may not be purchased in less than full standard package quantities.

NOTE: Suggested stock is for average dealer—may be increased or decreased in accordance with sales requirements.

Supersedes D-48 of September 1, 1947

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ACCESSORIES PRICE LIST (Cont.)

Prices Do Not Include Sales Taxes

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
FOR COLD PATCH TUBE REPAIRS				
TUBE REPAIR KIT (Reesle Size) Contains 1—3"x4" Strip Rubber 6—1¼" Sq. Beveled Patches 1—¾"x4" Tube of Cement 1—Metal Buffer	$ .25 ea.	$3.36 ctn. 24	24	12
TUBE REPAIR KIT (Shop Size) Contains 1—5"x12" Strip Rubber 100—1¼" Sq. Bev. Patches 25—1¼"x2" Bev. Patches 1—¼ Pt. Bottle Cement 1—Carborundum Buffer	—	1.10 ea.	12	3

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)
No. 350—COMBINATION TUBE REPAIR GUM (1 Lb. Roll)	—	$1.41 ea.	12	2
No. 300—SELF-CURING CEMENT				
(¼ Pint)	—	.19 ea.	12	6
(Pint)	—	.32 pt.	6	6
FOR VULCANIZED TUBE REPAIRS				
No. 400—VULCANIZING CEMENT (3 Min.)	—	.36 pt.	6	2
No. 450—TUBE GUM				
Quick Cure (1 Lb. Roll)	—	1.37 ea.	12	2

JANUARY 1, 1948

COMMISSIONS OR DISCOUNTS AND ALLOWANCES

ATLAS TIRES AND TUBES

REGULAR SALES

Atlas Passenger Tires	26% of List Price (Price of tire less excise tax)
Atlas Truck Casings	25% of List Price (Price of tire less excise tax)
Atlas Passenger Tubes	35% of List Price (Price of tube less excise tax)
Atlas Truck Tubes	35% of List Price (Price of tube less excise tax)

Additional Monthly Commissions or Discounts Applicable on Atlas TRUCK Tires and TRUCK Tubes as follows:

Monthly Volume $200.00 to $499.00	3%
" " 500.00 and over	5%

(Above commission or discount rates apply on sales to employees of Standard Oil Company of California and subsidiaries as well as on regular sales.)

WARRANTY ADJUSTMENTS AND REPAIRS

Atlas Passenger Tires	Adjustments under Atlas or Manufacturer's Warrantys or Policy Adjustments	$1.00 Handling Allowance Per Tire Adjusted
	Tire Repairs under Atlas Warranty	Retain Full List Price of Repair.
Atlas Truck Tires	Adjustments under Manufacturer's Warranty or Policy Adjustments	$2.00 Handling Allowance Per Tire Adjusted

ATLAS AND JUNIOR ATLAS BATTERIES

Atlas Batteries ("A" and "AG" Types)	30% of Net Price
Junior Atlas Batteries ("K" Types)	25% of Net Price
Adjustments under Atlas Warranty and Policy Adjustments	$.50 Handling Allowance Per Battery Adjusted

(Above commission or discount rates apply on sales to employees of Standard Oil Company of California and subsidiaries as well as on regular sales.)

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1951

BUDGET PLAN

ATLAS TIRES, BATTERIES and ACCESSORIES

SCHEDULE OF MONTHLY PAYMENTS and SERVICE CHARGES

THREE-MONTH PLAN

This plan may be used for all purchases where selling price is $16.00 or more

Down Payment

Credit Card Customers and Standard Oil Employees — None
All Others — Minimum 25%

Net Balance After Any Down Payment (Taxes Included)	Service Charge	Monthly Payment
$12.00 to $ 14.00	$ .50	$ 5.00
14.01 to 17.00		5.50
17.01 to 20.00	.75	6.50
20.01 to 23.00		7.50
23.01 to 26.00	1.00	8.50
26.01 to 29.00		9.50
29.01 to 32.00	1.25	10.50
32.01 to 35.00		11.50
35.01 to 38.00	1.50	13.00
38.01 to 41.00		14.00
41.01 to 44.00	1.75	15.00
44.01 to 47.00		16.00
47.01 to 50.00	2.00	17.00
50.01 to 53.00		18.00
53.01 to 56.00	2.25	19.00
56.01 to 59.00		20.00
59.01 to 62.00	2.50	21.00
62.01 to 65.00		22.00
65.01 to 68.00	2.75	23.00
68.01 to 71.00		24.00
71.01 to 74.00		25.00
74.01 to 77.00	3.00	26.50
77.01 to 80.00		27.50
80.01 to 83.00	3.25	28.50
83.01 to 86.00		29.50
86.01 to 89.00	3.50	30.50
89.01 to 92.00		31.50
92.01 to 95.00	3.75	32.50
95.01 to 98.00		33.50
98.01 to 100.00	4.00	34.50

On balances over $100.00, add 4% for service charge and divide by 3 to find the amount of each monthly payment.

SIX-MONTH PLAN

This plan may be used for all purchases where selling price is $34.00 or more

Down Payment

Standard Oil Employees — None
All Others — Minimum 25%

Net Balance After Any Down Payment (Taxes Included)	Service Charge	Monthly Payment
$20.00 to $ 23.00	$1.25	$ 5.00
23.01 to 26.00	1.50	5.00
26.01 to 29.00	1.75	5.00
29.01 to 32.00		5.50
32.01 to 35.00	2.00	6.00
35.01 to 38.00		6.50
38.01 to 41.00	2.50	7.00
41.01 to 44.00		7.50
44.01 to 47.00	2.75	8.00
47.01 to 50.00		8.50
50.01 to 53.00	3.25	9.00
53.01 to 56.00		9.50
56.01 to 59.00	3.50	10.00
59.01 to 62.00		10.50
62.01 to 65.00	3.75	11.00
65.01 to 68.00		11.50
68.01 to 71.00	4.25	12.50
71.01 to 74.00		13.00
74.01 to 77.00		13.50
77.01 to 80.00	4.75	14.00
80.01 to 83.00		14.50
83.01 to 86.00		15.00
86.01 to 89.00	5.50	15.50
89.01 to 92.00		16.00
92.01 to 95.00		16.50
95.01 to 98.00		17.00
98.01 to 100.00		17.50

On balances over $100.00, add 6% for service charge and divide by 6 to find the amount of each monthly payment.

Tires, Batteries and Mountable Accessories, sold on National Credit Card or Budget Plan must be mounted at time of sale.

WARRANTY PERIOD AND ADJUSTMENT CHARGES

ATLAS PASSENGER TIRES—WARRANTY PERIOD

Passenger Car Service, 12 Months—Commercial Car Service, 6 Months

Atlas Passenger and Truck Tires Are Covered by Manufacturer's Warranty for Life Against Defective Workmanship and Materials

To Calculate Adjustment Charges on Passenger Tires:

1st—Determine current selling price of Tire (including excise tax).
2nd—Determine from customer's Warranty, number of months tire in service, and whether passenger or commercial car service.
3rd—Calculate from following chart adjustment charge to be paid by customer for replacement tire.

Passenger Car Service — Use figures as shown on following chart.
Commercial Car Service — Use figures on chart up to five months and multiply by two.

EXAMPLE

Adjustment on Passenger Tire (Passenger Car Service)
Current Selling Price (including excise tax) is $23.60.
Warranty Indicates Five Months' Service.

Adjustment Charge on Chart Under "5 Mos." for $23.00	$9.58
" " " " " " " " 60 cents	.25
Amount Customer Would Pay for Adjustment	$9.83

(Add Sales Tax, Where Applicable, to Adjustment Charges)

CHARGE CHART FOR ADJUSTING ATLAS TIRES

ADJUSTMENT CHARGES — NUMBER OF MONTHS TIRE USED

Tire Price Dollars	1 Mo.	2 Mos.	3 Mos.	4 Mos.	5 Mos.	6 Mos.	7 Mos.	8 Mos.	9 Mos.	10 Mos.	11 Mos.
$14.00	$1.17	$2.33	$3.50	$ 4.67	$ 5.83	$ 7.00	$ 8.17	$ 9.33	$10.50	$11.67	$12.83
15.00	1.25	2.50	3.75	5.00	6.25	7.50	8.75	10.00	11.25	12.50	13.75
16.00	1.33	2.67	4.00	5.33	6.67	8.00	9.33	10.67	12.00	13.33	14.67
17.00	1.42	2.83	4.25	5.67	7.08	8.50	9.92	11.33	12.75	14.17	15.58
18.00	1.50	3.00	4.50	6.00	7.50	9.00	10.50	12.00	13.50	15.00	16.50
19.00	1.58	3.17	4.75	6.33	7.92	9.50	11.08	12.67	14.25	15.83	17.42
20.00	1.67	3.33	5.00	6.67	8.33	10.00	11.67	13.33	15.00	16.67	18.33
21.00	1.75	3.50	5.25	7.00	8.75	10.50	12.25	14.00	15.75	17.50	19.25
22.00	1.83	3.67	5.50	7.33	9.17	11.00	12.83	14.67	16.50	18.33	20.17
23.00	1.92	3.83	5.75	7.67	9.58	11.50	13.42	15.33	17.25	19.17	21.08
24.00	2.00	4.00	6.00	8.00	10.00	12.00	14.00	16.00	18.00	20.00	22.00
25.00	2.08	4.17	6.25	8.33	10.42	12.50	14.58	16.67	18.75	20.83	22.92
26.00	2.17	4.33	6.50	8.67	10.83	13.00	15.17	17.33	19.50	21.67	23.83
27.00	2.25	4.50	6.75	9.00	11.25	13.50	15.75	18.00	20.25	22.50	24.75
28.00	2.33	4.67	7.00	9.33	11.67	14.00	16.33	18.67	21.00	23.33	25.67
29.00	2.42	4.83	7.25	9.67	12.08	14.50	16.92	19.33	21.75	24.17	26.58
30.00	2.50	5.00	7.50	10.00	12.50	15.00	17.50	20.00	22.50	25.00	27.50
31.00	2.58	5.17	7.75	10.33	12.92	15.50	18.08	20.67	23.25	25.83	28.42
32.00	2.67	5.33	8.00	10.67	13.33	16.00	18.67	21.33	24.00	26.67	29.33
33.00	2.75	5.50	8.25	11.00	13.75	16.50	19.25	22.00	24.75	27.50	30.25
34.00	2.83	5.67	8.50	11.33	14.17	17.00	19.83	22.67	25.50	28.33	31.17
35.00	2.92	5.83	8.75	11.67	14.58	17.50	20.42	23.33	26.25	29.17	32.08
36.00	3.00	6.00	9.00	12.00	15.00	18.00	21.00	24.00	27.00	30.00	33.00
37.00	3.08	6.17	9.25	12.33	15.42	18.50	21.58	24.66	27.75	30.83	33.92
38.00	3.17	6.33	9.50	12.67	15.84	19.00	22.17	25.34	28.50	31.67	34.83
39.00	3.25	6.50	9.75	13.00	16.25	19.50	22.75	26.00	29.25	32.50	35.75
40.00	3.33	6.67	10.00	13.33	16.67	20.00	23.33	26.66	30.00	33.33	36.67

Cents	1 Mo.	2 Mos.	3 Mos.	4 Mos.	5 Mos.	6 Mos.	7 Mos.	8 Mos.	9 Mos.	10 Mos.	11 Mos.
.05	.00	.01	.01	.02	.02	.02	.03	.03	.04	.04	.05
.10	.01	.02	.02	.03	.04	.05	.06	.07	.07	.08	.09
.15	.01	.03	.04	.05	.06	.08	.09	.10	.11	.13	.14
.20	.02	.03	.05	.07	.08	.10	.12	.13	.15	.17	.18
.25	.02	.04	.06	.08	.10	.12	.15	.17	.19	.21	.23
.30	.03	.05	.08	.10	.13	.15	.18	.20	.23	.25	.28
.35	.03	.06	.09	.12	.15	.17	.20	.23	.26	.29	.32
.40	.03	.07	.10	.13	.17	.20	.23	.27	.30	.33	.37
.45	.04	.08	.11	.15	.19	.23	.26	.30	.34	.38	.41
.50	.04	.08	.12	.17	.21	.25	.29	.33	.37	.42	.46
.55	.05	.09	.14	.18	.23	.27	.32	.37	.41	.46	.50
.60	.05	.10	.15	.20	.25	.30	.35	.40	.45	.50	.55
.65	.05	.11	.16	.22	.27	.32	.38	.43	.49	.54	.60
.70	.06	.12	.17	.23	.29	.35	.41	.47	.52	.58	.64
.75	.06	.13	.19	.25	.31	.38	.44	.50	.56	.63	.69
.80	.07	.13	.20	.27	.33	.40	.47	.53	.60	.67	.73
.85	.07	.14	.21	.28	.35	.42	.50	.57	.64	.71	.78
.90	.08	.15	.23	.30	.38	.45	.53	.60	.68	.75	.83
.95	.08	.16	.24	.32	.40	.47	.55	.63	.71	.79	.87

WARRANTY PERIOD AND ADJUSTMENT CHARGES (Cont.)

ATLAS BATTERIES—WARRANTY PERIOD

TYPE "A" — Passenger Car Service, 21 Months — Commercial Car Service, 12 Months
TYPE "K" — Passenger Car Service, 12 Months — Commercial Car Service, 6 Months
TYPE "AG" — Passenger Car Service, 27 Months — Commercial Car Service, 13 Months

To Calculate Adjustment Charges on Atlas Batteries:

1st — Determine current list price of battery.
2nd — Determine from customer's Warranty, number of months battery in service and whether passenger or commercial car service.
3rd — Calculate from following charts, adjustment charge to be paid by customer for replacement battery.

EXAMPLE

Adjustment on Type "A" Battery (Passenger Car Service)
Current List Price is $18.00
Warranty Indicates 13 Months' Service

Adjustment Charge on Chart Under "13 Mos." for $18.00	$9.29
" " " " " " " " 80 cents	.80
Amount Customer Would Pay for Adjustment	$9.79

(Add Sales Tax, Where Applicable, to Adjustment Charges)

If you adjust an Atlas Battery (Type "K") with an "A" or "AG" type or a Type "A" with an "AG," add to the adjustment charge the difference between the retail prices of the batteries. Do not adjust regular Atlas Battery (Type "A") with a Type "K," or Type "AG" with a Type "A." If adjustment is desired on that basis charge full RETAIL price for the replacement.

There is no charge for adjustments within 90 days of original purchase except when a Type "K" is replaced with an "A" or "AG" type, or when an "A" type is replaced with an "AG" type, in which event the difference in retail price is charged.

CHARGE CHART FOR ADJUSTING ATLAS TYPE "A" BATTERIES

PASSENGER CAR SERVICE

ADJUSTMENT CHARGES — NUMBER OF MONTHS BATTERY USED

Battery List Price Battery	4 Mos.	5 Mos.	6 Mos.	7 Mos.	8 Mos.	9 Mos.	10 Mos.	11 Mos.	12 Mos.	13 Mos.	14 Mos.	15 Mos.	16 Mos.	17 Mos.	18 Mos.	19 Mos.	20 Mos.
$17.00	$3.24	$4.05	$4.86	$5.67	$6.48	$ 7.29	$ 8.10	$ 8.90	$ 9.71	$10.52	$11.33	$12.14	$12.95	$13.76	$14.57	$15.38	$16.19
18.00	3.43	4.29	5.14	6.00	6.86	7.71	8.57	9.43	10.29	11.14	12.00	12.86	13.71	14.57	15.43	16.29	17.14
19.00	3.62	4.52	5.43	6.33	7.24	8.14	9.05	9.95	10.86	11.76	12.67	13.57	14.48	15.38	16.29	17.19	18.10
20.00	3.81	4.76	5.71	6.67	7.62	8.57	9.52	10.48	11.43	12.38	13.33	14.29	15.24	16.19	17.14	18.10	19.05
21.00	4.00	5.00	6.00	7.00	8.00	9.00	10.00	11.00	12.00	13.00	14.00	15.00	16.00	17.00	18.00	19.00	20.00
22.00	4.19	5.24	6.29	7.33	8.38	9.43	10.48	11.52	12.57	13.62	14.67	15.71	16.76	17.81	18.86	19.90	20.95
23.00	4.38	5.48	6.57	7.67	8.76	9.86	10.95	12.05	13.14	14.24	15.33	16.43	17.52	18.62	19.71	20.81	21.90
24.00	4.57	5.71	6.86	8.00	9.14	10.29	11.43	12.57	13.71	14.86	16.00	17.14	18.29	19.43	20.57	21.71	22.86
25.00	4.76	5.95	7.14	8.33	9.52	10.71	11.90	13.10	14.29	15.48	16.67	17.86	19.05	20.24	21.43	22.62	23.81
26.00	4.95	6.19	7.43	8.67	9.90	11.14	12.38	13.62	14.86	16.09	17.33	18.57	19.81	21.05	22.28	23.52	24.76
27.00	5.14	6.43	7.72	9.00	10.29	11.57	12.86	14.15	15.43	16.72	18.00	19.29	20.58	21.86	23.15	24.43	25.72
28.00	5.33	6.67	8.00	9.33	10.66	12.00	13.33	14.66	16.00	17.33	18.66	20.00	21.33	22.66	23.99	25.33	26.67
29.00	5.52	6.91	8.29	9.67	11.05	12.43	13.81	15.19	16.57	17.95	19.33	20.72	22.10	23.48	24.86	26.24	27.62
30.00	5.72	7.15	8.57	10.00	11.43	12.86	14.29	15.72	17.15	18.58	20.01	21.44	22.86	24.29	25.72	27.15	28.57

Cents	4 Mos.	5 Mos.	6 Mos.	7 Mos.	8 Mos.	9 Mos.	10 Mos.	11 Mos.	12 Mos.	13 Mos.	14 Mos.	15 Mos.	16 Mos.	17 Mos.	18 Mos.	19 Mos.	20 Mos.
.05	.01	.01	.01	.02	.02	.02	.02	.03	.03	.03	.03	.04	.04	.04	.04	.05	.05
.10	.02	.02	.03	.03	.04	.04	.05	.05	.06	.06	.07	.07	.08	.08	.09	.09	.10
.15	.03	.04	.04	.05	.06	.06	.07	.08	.09	.09	.10	.11	.11	.12	.13	.14	.14
.20	.04	.05	.06	.07	.08	.09	.10	.10	.11	.12	.13	.14	.15	.16	.17	.18	.19
.25	.05	.06	.07	.08	.10	.11	.12	.13	.14	.15	.17	.18	.19	.20	.21	.23	.24
.30	.06	.07	.09	.10	.11	.13	.14	.16	.17	.19	.20	.21	.23	.24	.26	.27	.29
.35	.07	.08	.10	.12	.13	.15	.17	.18	.20	.22	.23	.25	.27	.28	.30	.32	.33
.40	.08	.10	.11	.13	.15	.17	.19	.21	.23	.25	.27	.29	.30	.32	.34	.36	.38
.45	.09	.11	.13	.15	.17	.19	.21	.24	.26	.28	.30	.32	.34	.36	.39	.41	.43
.50	.10	.12	.14	.17	.19	.21	.24	.26	.29	.31	.33	.36	.38	.40	.43	.45	.48
.55	.10	.13	.16	.18	.21	.24	.26	.29	.31	.34	.37	.39	.42	.45	.47	.50	.52
.60	.11	.14	.17	.20	.23	.26	.29	.31	.34	.37	.40	.43	.46	.49	.51	.54	.57
.65	.12	.15	.19	.22	.25	.28	.31	.34	.37	.40	.43	.46	.49	.53	.56	.59	.62
.70	.13	.17	.20	.23	.27	.30	.33	.37	.40	.43	.47	.50	.53	.57	.60	.63	.67
.75	.14	.18	.21	.25	.29	.32	.36	.39	.43	.46	.50	.54	.57	.61	.64	.68	.71
.80	.15	.19	.23	.27	.30	.34	.38	.42	.46	.50	.53	.57	.61	.65	.69	.72	.76
.85	.16	.20	.24	.28	.32	.36	.40	.45	.49	.53	.57	.61	.65	.69	.73	.77	.81
.90	.17	.21	.26	.30	.34	.39	.43	.47	.51	.56	.60	.64	.69	.73	.77	.81	.86
.95	.18	.23	.27	.32	.36	.41	.45	.50	.54	.59	.63	.68	.72	.77	.81	.86	.90

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WARRANTY PERIOD AND ADJUSTMENT CHARGES (Cont.)

ATLAS BATTERIES

CHARGE CHART FOR ADJUSTING ATLAS TYPE "K" BATTERIES

PASSENGER CAR SERVICE

Battery List Price Dollars	ADJUSTMENT CHARGES — NUMBER OF MONTHS BATTERY USED							
	4 Mos.	5 Mos.	6 Mos.	7 Mos.	8 Mos.	9 Mos.	10 Mos.	11 Mos.
$12.00	$4.00	$5.00	$6.00	$7.00	$8.00	$ 9.00	$10.00	$11.00
13.00	4.33	5.42	6.50	7.58	8.67	9.75	10.83	11.92
14.00	4.67	5.84	7.00	8.17	9.34	10.50	11.67	12.83
15.00	5.00	6.25	7.50	8.75	10.00	11.25	12.50	13.75
16.00	5.33	6.67	8.00	9.33	10.66	12.00	13.33	14.67
17.00	5.67	7.09	8.50	9.92	11.34	12.75	14.17	15.58
Cents	**4 Mos.**	**5 Mos.**	**6 Mos.**	**7 Mos.**	**8 Mos.**	**9 Mos.**	**10 Mos.**	**11 Mos.**
.05	.02	.02	.02	.03	.03	.04	.04	.05
.10	.03	.04	.05	.06	.07	.07	.08	.09
.15	.05	.06	.08	.09	.10	.11	.13	.14
.20	.07	.08	.10	.12	.13	.15	.17	.18
.25	.08	.10	.12	.15	.17	.19	.21	.23
.30	.10	.13	.15	.18	.20	.23	.25	.28
.35	.12	.15	.17	.20	.23	.26	.29	.32
.40	.13	.17	.20	.23	.27	.30	.33	.37
.45	.15	.19	.23	.26	.30	.34	.38	.41
.50	.17	.21	.25	.29	.33	.37	.42	.46
.55	.18	.23	.27	.32	.37	.41	.46	.50
.60	.20	.25	.30	.35	.40	.46	.50	.55
.65	.22	.27	.32	.38	.43	.49	.54	.60
.70	.23	.29	.35	.41	.47	.52	.58	.64
.75	.25	.31	.38	.44	.50	.56	.63	.69
.80	.27	.33	.40	.47	.53	.60	.67	.73
.85	.28	.35	.42	.50	.57	.64	.71	.78
.90	.30	.38	.45	.53	.60	.68	.75	.83
.95	.32	.40	.47	.55	.63	.71	.79	.87

CHARGE CHART FOR ADJUSTING ATLAS TYPE "AG" BATTERIES

PASSENGER CAR SERVICE

Battery List Price Dollars	ADJUSTMENT CHARGES — NUMBER OF MONTHS BATTERY USED										
	4 Mos.	5 Mos.	6 Mos.	7 Mos.	8 Mos.	9 Mos.	10 Mos.	11 Mos.	12 Mos.	13 Mos.	14 Mos.
$20.00	$2.96	$3.70	$4.44	$5.19	$5.93	$6.67	$7.41	$8.15	$8.89	$9.63	$10.37
21.00	3.11	3.89	4.67	5.45	6.22	7.00	7.78	8.56	9.34	10.11	10.89
22.00	3.26	4.08	4.89	5.71	6.52	7.34	8.15	8.97	9.78	10.60	11.41
23.00	3.40	4.26	5.11	5.96	6.82	7.67	8.52	9.37	10.22	11.08	11.93
24.00	3.56	4.45	5.33	6.22	7.11	8.00	8.89	9.78	10.67	11.56	12.45
25.00	3.70	4.63	5.56	6.48	7.41	8.33	9.26	10.19	11.11	12.04	12.96
Cents	**4 Mos.**	**5 Mos.**	**6 Mos.**	**7 Mos.**	**8 Mos.**	**9 Mos.**	**10 Mos.**	**11 Mos.**	**12 Mos.**	**13 Mos.**	**14 Mos.**
.05	.01	.01	.01	.01	.01	.02	.02	.02	.02	.02	.03
.10	.01	.02	.02	.03	.03	.03	.04	.04	.04	.05	.05
.15	.02	.03	.03	.04	.04	.05	.06	.06	.07	.07	.08
.20	.03	.04	.04	.05	.06	.07	.07	.08	.09	.10	.10
.25	.04	.05	.06	.06	.07	.08	.09	.10	.11	.12	.13
.30	.04	.06	.07	.08	.09	.10	.11	.12	.13	.14	.16
.35	.05	.06	.08	.09	.10	.12	.13	.14	.16	.17	.18
.40	.06	.07	.09	.10	.12	.13	.15	.16	.18	.19	.21
.45	.07	.08	.10	.12	.13	.15	.17	.18	.20	.22	.23
.50	.07	.09	.11	.13	.15	.17	.19	.20	.22	.24	.26
.55	.08	.10	.12	.14	.16	.18	.20	.22	.24	.26	.29
.60	.09	.11	.13	.16	.18	.20	.22	.24	.27	.29	.31
.65	.10	.12	.14	.17	.19	.22	.24	.26	.29	.31	.34
.70	.10	.13	.16	.18	.21	.23	.26	.29	.31	.34	.36
.75	.11	.14	.17	.19	.22	.25	.28	.31	.33	.36	.39
.80	.12	.15	.18	.21	.24	.27	.30	.33	.36	.38	.41
.85	.13	.16	.19	.22	.25	.28	.31	.35	.38	.41	.44
.90	.13	.17	.20	.23	.27	.30	.33	.37	.40	.43	.47
.95	.14	.18	.21	.25	.28	.32	.35	.39	.42	.46	.49

(Balance of This Chart Continued on Next Page)

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WARRANTY PERIOD AND ADJUSTMENT CHARGES (Cont.)

ATLAS BATTERIES

CHARGE CHART FOR ADJUSTING ATLAS TYPE "AG" BATTERIES

PASSENGER CAR SERVICE (Cont.)

Battery List Price Dollars	ADJUSTMENT CHARGES — NUMBER OF MONTHS BATTERY USED											
	15 Mos.	16 Mos.	17 Mos.	18 Mos.	19 Mos.	20 Mos.	21 Mos.	22 Mos.	23 Mos.	24 Mos.	25 Mos.	26 Mos.
$20.00	$11.11	$11.85	$12.59	$13.33	$14.07	$14.81	$15.55	$16.30	$17.04	$17.78	$18.52	$19.26
21.00	11.67	12.45	13.23	14.00	14.78	15.56	16.34	17.12	17.89	18.67	19.45	20.22
22.00	12.23	13.04	13.86	14.67	15.49	16.30	17.12	17.93	18.75	19.56	20.38	21.18
23.00	12.78	13.63	14.48	15.34	16.19	17.04	17.89	18.74	19.60	20.45	21.30	22.15
24.00	13.34	14.22	15.11	16.00	16.89	17.78	18.67	19.56	20.45	21.34	22.23	23.11
25.00	13.89	14.82	15.74	16.67	17.59	18.52	19.45	20.37	21.30	22.22	23.15	24.07
Cents	**15 Mos.**	**16 Mos.**	**17 Mos.**	**18 Mos.**	**19 Mos.**	**20 Mos.**	**21 Mos.**	**22 Mos.**	**23 Mos.**	**24 Mos.**	**25 Mos.**	**26 Mos.**
.05	.03	.03	.03	.03	.04	.04	.04	.04	.04	.04	.05	.05
.10	.06	.06	.06	.07	.07	.07	.08	.08	.09	.09	.09	.10
.15	.08	.09	.09	.10	.11	.11	.12	.12	.13	.13	.14	.14
.20	.11	.12	.13	.13	.14	.15	.16	.16	.17	.18	.19	.19
.25	.14	.15	.16	.17	.18	.19	.19	.20	.21	.22	.23	.24
.30	.17	.18	.19	.20	.21	.22	.23	.24	.26	.27	.28	.29
.35	.19	.21	.22	.23	.25	.26	.27	.29	.30	.31	.32	.34
.40	.22	.24	.25	.27	.28	.30	.31	.33	.34	.36	.37	.39
.45	.25	.27	.28	.30	.32	.33	.35	.37	.38	.40	.42	.43
.50	.28	.30	.31	.33	.35	.37	.39	.41	.43	.44	.46	.48
.55	.31	.33	.35	.37	.39	.41	.43	.45	.47	.49	.51	.53
.60	.33	.36	.38	.40	.42	.44	.47	.49	.51	.53	.56	.58
.65	.36	.39	.41	.43	.46	.48	.51	.53	.55	.58	.60	.63
.70	.39	.41	.44	.47	.49	.52	.54	.57	.60	.62	.65	.67
.75	.42	.44	.47	.50	.53	.56	.58	.61	.64	.67	.69	.72
.80	.44	.47	.50	.53	.56	.59	.62	.65	.68	.71	.74	.77
.85	.47	.50	.53	.57	.60	.63	.66	.69	.72	.76	.79	.82
.90	.50	.53	.57	.60	.63	.67	.70	.73	.77	.80	.83	.87
.95	.53	.56	.60	.63	.67	.70	.74	.77	.81	.84	.88	.91

CHARGE CHART FOR ADJUSTING ATLAS TYPE "A" BATTERIES

COMMERCIAL SERVICE

Battery List Price Dollars	ADJUSTMENT CHARGES — NUMBER OF MONTHS BATTERY USED							
	4 Mos.	5 Mos.	6 Mos.	7 Mos.	8 Mos.	9 Mos.	10 Mos.	11 Mos.
$17.00	$5.67	$ 7.08	$ 8.50	$ 9.92	$11.33	$12.75	$14.17	$15.58
18.00	6.00	7.50	9.00	10.50	12.00	13.50	15.00	16.50
19.00	6.33	7.92	9.50	11.08	12.67	14.25	15.83	17.42
20.00	6.67	8.33	10.00	11.67	13.33	15.00	16.67	18.33
21.00	7.00	8.75	10.50	12.25	14.00	15.75	17.50	19.25
22.00	7.33	9.17	11.00	12.83	14.67	16.50	18.33	20.17
23.00	7.67	9.58	11.50	13.42	15.33	17.25	19.17	21.08
24.00	8.00	10.00	12.00	14.00	16.00	18.00	20.00	22.00
25.00	8.33	10.42	12.50	14.58	16.67	18.75	20.83	22.92
26.00	8.67	10.84	13.00	15.17	17.34	19.50	21.67	23.83
27.00	9.00	11.25	13.50	15.75	18.00	20.25	22.50	24.75
28.00	9.33	11.67	14.00	16.33	18.66	21.00	23.33	25.67
29.00	9.67	12.09	14.50	16.92	19.34	21.75	24.17	26.58
30.00	10.00	12.50	15.00	17.50	20.00	22.50	25.00	27.50
Cents	**4 Mos.**	**5 Mos.**	**6 Mos.**	**7 Mos.**	**8 Mos.**	**9 Mos.**	**10 Mos.**	**11 Mos.**
.05	.02	.02	.02	.03	.03	.04	.04	.05
.10	.03	.04	.05	.06	.07	.07	.08	.09
.15	.05	.06	.07	.09	.10	.11	.13	.14
.20	.07	.08	.10	.12	.13	.15	.17	.18
.25	.08	.10	.12	.15	.17	.19	.21	.23
.30	.10	.13	.15	.18	.20	.23	.25	.28
.35	.12	.15	.17	.20	.23	.26	.29	.32
.40	.13	.17	.20	.23	.27	.30	.33	.37
.45	.15	.19	.23	.26	.30	.34	.38	.41
.50	.17	.21	.25	.29	.33	.37	.42	.46
.55	.18	.23	.27	.32	.37	.41	.46	.50
.60	.20	.25	.30	.35	.40	.45	.50	.55
.65	.22	.27	.32	.38	.43	.49	.54	.60
.70	.23	.29	.35	.41	.47	.52	.58	.64
.75	.25	.31	.38	.44	.50	.56	.63	.69
.80	.27	.33	.40	.47	.53	.60	.67	.73
.85	.28	.35	.42	.50	.57	.64	.71	.78
.90	.30	.38	.45	.53	.60	.68	.75	.83
.95	.32	.40	.47	.55	.63	.71	.79	.87

WARRANTY PERIOD AND ADJUSTMENT CHARGES (Cont.)

ATLAS BATTERIES

CHARGE CHART FOR ADJUSTING ATLAS TYPE "AG" BATTERIES

COMMERCIAL SERVICE

Battery List Price Dollars	ADJUSTMENT CHARGES — NUMBER OF MONTHS BATTERY USED								
	4 Mos.	5 Mos.	6 Mos.	7 Mos.	8 Mos.	9 Mos.	10 Mos.	11 Mos.	12 Mos.
$20.00	$6.15	$7.69	$ 9.23	$10.77	$12.31	$13.85	$15.38	$16.92	$18.46
21.00	6.46	8.08	9.69	11.31	12.92	14.54	16.15	17.77	19.38
22.00	6.77	8.46	10.15	11.84	13.54	15.23	16.92	18.61	20.31
23.00	7.08	8.85	10.61	12.38	14.15	15.92	17.69	19.46	21.23
24.00	7.38	9.23	11.08	12.92	14.77	16.61	18.46	20.31	22.15
25.00	7.69	9.62	11.54	13.46	15.38	17.31	19.23	21.15	23.08

Cents	4 Mos.	5 Mos.	6 Mos.	7 Mos.	8 Mos.	9 Mos.	10 Mos.	11 Mos.	12 Mos.
.05	.02	.02	.02	.03	.03	.03	.04	.04	.05
.10	.03	.04	.05	.05	.06	.07	.08	.08	.09
.15	.05	.06	.07	.08	.09	.10	.12	.13	.14
.20	.06	.08	.09	.11	.12	.14	.15	.17	.18
.25	.08	.10	.12	.13	.15	.17	.19	.21	.23
.30	.09	.12	.14	.16	.18	.21	.23	.25	.28
.35	.11	.13	.16	.19	.22	.24	.27	.30	.32
.40	.12	.15	.18	.22	.25	.28	.31	.34	.37
.45	.14	.17	.21	.24	.28	.31	.35	.38	.42
.50	.15	.19	.23	.27	.31	.35	.38	.42	.46
.55	.17	.21	.25	.30	.34	.38	.42	.47	.51
.60	.18	.23	.28	.32	.37	.42	.46	.51	.55
.65	.20	.25	.30	.35	.40	.45	.50	.55	.60
.70	.22	.27	.32	.38	.43	.48	.54	.59	.65
.75	.23	.29	.35	.40	.46	.52	.58	.63	.69
.80	.25	.31	.37	.43	.49	.55	.62	.68	.74
.85	.26	.33	.39	.46	.52	.59	.65	.72	.78
.90	.28	.35	.42	.48	.55	.62	.69	.76	.83
.95	.29	.37	.44	.51	.58	.66	.73	.80	.88

CHARGE CHART FOR ADJUSTING ATLAS TYPE "K" BATTERIES

COMMERCIAL SERVICE

ADJUSTMENT CHARGES — NUMBER OF MONTHS BATTERY USED

Battery List Price Dollars	4 Mos.	8 Mos.
$12.00	$8.00	$10.00
13.00	8.67	10.83
14.00	9.33	11.67
15.00	10.00	12.50
16.00	10.67	13.33
17.00	11.33	14.17

Cents	4 Mos.	8 Mos.
.05	.03	.04
.10	.07	.08
.15	.10	.13
.20	.13	.17
.25	.17	.20
.30	.20	.25
.35	.23	.29
.40	.26	.33
.45	.30	.37
.50	.33	.41
.55	.37	.45
.60	.40	.50
.65	.43	.54
.70	.47	.58
.75	.50	.62
.80	.53	.66
.85	.57	.70
.90	.60	.75
.95	.63	.79

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SELLING PRICES FOR MOTOR OILS

Prices Include Federal Taxes and Exclude Sales Taxes

OILS	BULK		QUART CAN
	Per Pt.	Per Qt.	Per Qt.
RPM MOTOR OILS	.20	.40	.40
STANDARD PENN MOTOR OIL	.20	.40	—
ZEROLENE MOTOR OIL	.13	.25	—

SUGGESTED PRICES FOR OTHER PRODUCTS AND SERVICES

GREASES Prices Include Federal Tax	BULK		PACKAGES
	Per Pint or Pound	Per Gal. (8 Lbs. per Gal.)	1-Lb. Can
RPM MULTI-SERVICE GEAR LUBRICANT	.35	†2.00	
RPM CUP GREASE			.30
RPM CHASSIS GREASE (HVY)			.30
RPM WATER PUMP GREASE			.55
RPM WHEEL BEARING GREASE			.35

†This price not applicable when sold in Gear Case Service.

SPECIALTIES (Write in Prices Applicable to Your Station)	Pt.	Qt.	Gal.	4 Oz.	Ea.
STANDARD CLEANING FLUID					
CHEVRON FLY SPRAY					
CHEVRON FLY SPRAY HAND SPRAYER					
RPM HANDY OIL					
CHEVRON SURFACE SPRAY					
PEARL OIL (Bulk)					
CHEVRON CLEANING SOLVENT (Bulk)					

TIRE AND TUBE SERVICE

	Passenger	6" HI Pressure 750 Bus Balloon or Smaller	34 x 7 825/20 and up
TIRE REPAIR			
Dismounting Tire, Installing Patch and Remounting Tire: Service only	$ .50	$ .75#	$1.25#
SWITCHING WHEELS			
Each Wheel (including spare)	$ .15	††$ .25	††$ .37½
TUBE REPAIR			
Dismounting Tire, Repairing Tube and Remounting Tire	$ .75†	$1.00#†	$1.50#†

TUBE REPAIR (Cont.)	Passenger	6" HI Pressure 750 Bus Balloon or Smaller	34 x 7 825/20 and up
Valve stem replacement when tube is removed or installed	$1.25	$1.25#	$1.50#
Each additional 1¼" square patch	.15	.15	.15
Each additional 1" of strip patch	.15	.15	.15
Each additional Dillectric patch	.15	.15	.15

(Suggested maximum additional charge—$1.50)

†Above prices include single 1¼" square patch, 1" x 3" strip patch or single Dillectric patch.

#If inside dual, add 50c more.
††If inside dual, add 25c more.
Selling price of Tire Patches to be added to all repair charges.

BATTERY SERVICE

BATTERY RECHARGING	
Slow Charge	$ .75
Fast Charge	1.00
RENTAL BATTERY	
Per Day	.25

SUGGESTED PRICES FOR LUBRICATION SERVICES

State Sales Taxes not included. Federal Tax is included where applicable.

PASSENGER CAR AND STATION WAGON CHASSIS LUBRICATION

Following Lubrication Prices apply to all cars as classified, with the following exceptions:

(1) All Cars Equipped with One Shot Systems $1.25
(Does not include filling One Shot Container)

(2) All Cars ENTIRELY Equipped with Rubber or Ball Bearing Shackles $1.25

(3) Foreign or domestic cars not listed $1.65

$1.25

American Bantam
Austin
Chevrolet
Crosley
Dodge—4 Cyl.
Ford (exc. Jeep)
Graham
Mercury 8
Nash Ambassador 600
Plymouth (Except 1933* and Std. 6-'34*)
Studebaker Champion
Willys (1933 and after)

$1.50

Auburn
Buick 40, 50, 60, 70
Chrysler
De Soto
Dodge (except 4 cyl. & 1933*)
Frazer
Hudson & Terraplane
Jeep (Willys-Ford)
Kaiser
Lafayette
Lincoln Continental, Custom Zephyr
Nash (Except Amb. 600)
Oldsmobile
Packard "110(6)" & "120(8)"
Pontiac
Studebaker
Willys (Before 1933)

$1.65

Buick 80, 90 and all before 1931
Cadillac V-8 (60, 61, 62, 63)
La Salle (50 Series 1934 and after)
Packard "8" "Super 8" and "12"

$1.90

Cadillac V-8 (except 60, 61, 62, 63)
Duesenberg
La Salle (1933 and before)
Marmon
Pierce-Arrow
Stutz

$2.15

Cadillac V-12 V-16
Lincoln V-8, V-12
Rolls-Royce

*Add 50c for Clutch release bearing.

Suggested Prices When Chassis Lubrication Is Not Required:

Cleaning and Spraying Springs	$ .75
Filling Universal Joints (each)	.50
Fittings Lubricated (each)	.05

Following Products and Services are not included in Chassis Lubrication.

Carburetor Air Cleaners (each cleaner)

Plain Mesh Type	$ .45
Oil Bath Type	.50

In addition, charge for oil used to refill reservoir at regular price.

Dubonnet Individual Suspension Reservoirs

Shock Absorber Fluid—Per ½ Pint	.25

Repacking all Front Wheel Bearings Each Wheel ..... .75

Lubricating Steel Covered Springs Per Pair ..... .75

Draining and Refilling Hudson and Terraplane

Wet Clutch	.75

RPM Multi-Service Gear Lubricant:

Per Pint or Pound	.35

RPM Motor Oil for Transmissions
(Including Automatic, Self Shifter, Overdrive and Underdrive) Per Pint ..... .35

Gear Case Draining, Flushing and Refilling Service—
Charge for Lubricants Only.

Draining and Refilling Power Units for Hydraulic Window Lifts

Brake Fluid—First pint	.75
Each additional ½ pint or fraction	.25

Hydraulic Brake System—Inspecting and Refilling

Up to ½ Pint	.35
Each additional ½ Pint or fraction	.25

Zerolene SAE-40 for One Shot System Per Pint ..... .10

TRUCK LUBRICATION

CAUTION—IN PLACING TRUCKS ON HOIST

UNLOADED Pickups and Equipment Trucks of 1½ Tons OR LESS Can Be Placed on Hoist If Body Height, Width and Overhang Permit.

TRUCKS OVER 1½ TONS

If ton rating of truck cannot be determined, see truck registration certificate. Trucks of over 6000 lbs. will be classed as "over 1½ tons."

Chassis Lubrication

Trucks with one rear axle and 2 universal joints requiring lubrication:

Over 1½ to 3 Tons, Inclusive	$1.65
3½ to 5 Tons, Inclusive	1.90
Add for filling each universal joint over 2	.35
Add for lubricating trucks with 2 rear axles	.35
Add for 5th wheel mounted on truck bed for towing trailer	.35
Chassis Lubrication—Trailers (2-Wheel)	.35
Chassis Lubrication—Trailers (4 and 6-Wheel)	.60

Front Wheel Bearing Lubrication

Over 1½ to 3 Tons (each wheel)	1.00
Over 3 Tons (each wheel)	1.50
Dual Wheels (each wheel)	1.50

TRUCKS 1½ TONS OR LESS

Chassis Lubrication

Up to and including 1 Ton	$1.25
Over 1 Ton to and including 1½ Tons	1.50
Front Wheel Bearing Lubrication (each wheel)	.75

ALL TRUCKS

When Chassis Lubrication Not Required

Cleaning and Spraying Springs	.75
Filling Universal Joints (each)	.50
Fittings Lubricated (each)	.05

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LIST ADDITIONAL ITEMS HERE

ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)	ITEM	Suggested Selling Price	Dealer's Cost	Standard Package	Suggested Stock (See Note)

SS. 3961-AD

GOVERNMENT EXHIBIT NO. 17-C

SUBLEASE

Dated March 19, 1945

1. STANDARD OIL COMPANY OF CALIFORNIA, a corporation, "Lessor" leases to Mildred C. Ranson, a married person dealing in her separate property, "Lessee", for the term commencing the first day of April, 1945, and ending the 30th day of March, 1955, the following described premises in the City of Hermiston, County of Umatilla, State of Oregon

All of Lots 1, 2, 3, 4, 5 and 6 in Block 5 of the Original Town, now City, of Hermiston,

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~~shall be extended automatically for a like term, less one day, and Lessee agrees to pay to Lessor during said extended~~ term the following rental:

M.C.R.

GOVERNMENT EXHIBIT NO. 17-D

STANDARD OIL COMPANY OF CALIFORNIA

San Francisco, California
April 16, 1945

Mrs. Mildred C. Ranson
Main and Third Streets
Hermiston, Oregon

Dear Mrs. Ranson:

Reference is made to our letter of March 19, 1945 wherein we consented to your subletting to Hermiston Auto Company the premises referred to in the lease and sublease dated March 19, 1945 now operative between us.

In the event you should subsequently desire to sublet the premises to a party other than Hermiston Auto Company you agree to secure our written consent thereto prior to such subletting.

Should you desire at any time after April 1, 1947 to sell the service station operating equipment to such sublessee, we will release from the operation of the mortgage dated March 23, 1945 the following articles of equipment:

3	550 gal. underground tanks	1	model 750F Aro grease gun
1	Model 700F Aro grease gun	1	model 535F Aro grease gun
1	model 815FC Aro grease gun	1	model 865FC Aro grease gun
1	model 125j Aro Chassis gun	3	model 120J Aro gear lub gun
1	model 200 Aro gun rack	2	model A34 Hallett hoists
3	model 70C Wayne pumps	2	model W376 Wayne compressors
4	30 gal. Wayne lubsters		

Such release, however, will be made provided there is no default on your part under the lease, sublease and dealer agreement dated March 19, 1945 and the promissory note dated March 23, 1945.

Please signify your agreement to the foregoing by signing in the space below.

Very truly yours,

STANDARD OIL COMPANY OF CALIFORNIA

By Wallaston
Attorney in fact

ACCEPTED AND AGREED TO:

This 27th day of
April, 1945.
Mildred C. Ranson

E. D. THOMPSON

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together with improvements and fixtures located thereon.

2. This sublease is subject to all the terms and conditions of the lease dated the 19th day of March, 1945, from Mildred C. Ransom, a married person dealing in her separate property to STANDARD OIL COMPANY OF CALIFORNIA.

3. Lessee agrees to pay to Lessor as rental for the use and occupancy of the leased premises as follows:

In advance on the first day of each and every month for the full term hereof, the sum of Seventy and no/100 Dollars ($70.00).

If any rental shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for Lessor to re-enter the leased premises and remove all persons therefrom, and Lessee agrees to quit and deliver up the premises to the Lessor peaceably and quietly at the end of said term in as good order and condition as the same are now or may be put into.

4. Lessee shall handle and sell on the leased premises only such petroleum products as are sold Lessee by Lessor, and Lessee agrees not to store, handle, sell, or distribute on or from said premises any petroleum products of any description other than those petroleum products sold to Lessee by Lessor. The price payable by Lessee to Lessor for said petroleum products shall be Lessor's posted price for the same or similar products to its Dealers generally in Lessee's vicinity at time and place of delivery.

5. Lessee shall not sell or assign this sublease, or sublet the leased premises without written consent of Lessor first had and obtained.

6. Lessor shall pay all taxes levied upon the leased premises or upon improvements placed by Lessor upon the leased premises or acquired by Lessor before or during the term hereof. Lessee shall pay any taxes levied or assessed as the result of improvements owned by Lessee and located on said premises.

7. Execution of this lease by Lessee constitutes an offer which shall not be deemed accepted by Lessor until Lessor has executed this sublease and delivered a duplicate original thereof to Lessee.

STANDARD OIL COMPANY OF CALIFORNIA, Lessor

By W. J. Walton
Attorney in fact.

Mildred C. Ranson, Lessee
Mildred C. Ranson

Sublease

B-456
(9-44)

RECORD CONT'D P.1374 - 1387

EXHIBIT "A"

That certain wood-frame and stucco Garage Building as now situate on the above demised premises, together with Offices, Show Room and Rest Rooms used in conjunction with the Service Station as installed thereon, complete with Canopy, Pump Block and Slabs including Curb Cuts and Approaches thereto and equipped with that certain Equipment listed on Exhibit "B" attached hereto and made a part hereof; ~~EXCEPTING THEREFROM~~ that certain portion of the Garage Building having a ~~width of~~ twenty-eight feet, more or less, and a length of ninety ~~feet~~, more or less, Situate in the Southerly and Easterly ~~portion~~ of the above described Real Property, said afore ~~mentioned~~ portion of the entire Garage Facilities representing ~~an investment made by Lessee herein, in whom Title is now vested.~~ M.C.K.

EXHIBIT "B"

3 550 gal. underground tanks.
1 model 750F Aro grease gun
1 model 700 F Aro grease gun
1 model 535F Aro grease gun
1 model 816FG Aro grease gun
1 model 865FG Aro grease gun
1 model 125j Aro Chassis gun
3 model 120J Aro gear lub gun
1 model 200 Aro gun rack
2 model A34 Hallett hoists
3 model 700 Wayne pumps
2 model W376V Wayne compressors
4 30 gal. Wayne lubsters

Mrs. Mildred C. Ransom
Main and Third Streets
Hermiston, Oregon

Dear Mrs. Ransom:

Reference is made to the lease, sublease and dealer agreement dated March 19, 1945 between us.

We hereby consent to your subleasing the premises described therein to Hermiston Auto Company. Said sublease to Hermiston Auto Company to provide that no assignment thereof or further subletting shall be made without our written consent.

Provided, further, that said sublease shall be subject to the lease, sublease and dealer agreement dated March 19, 1945 between us and provided, further, that said sublease shall be subject to the note and mortgage dated March 23, 1945 executed by you in our favor.

Please signify your agreement to the foregoing by signing in the space provided below.

therein to Hermiston Auto Company. Said sublease to Hermiston Auto Company to provide that no assignment thereof or further subletting shall be made without our written consent.

Provided, further, that said sublease shall be subject to the lease, sublease and dealer agreement dated March 19, 1945 between us and provided, further, that said sublease shall be subject to the note and mortgage dated March 23, 1945 executed by you in our favor.

Please signify your agreement to the foregoing by signing in the space provided below.

Very truly yours

STANDARD OIL COMPANY OF CALIFORNIA

By C A Winters
Attorney in fact

ACCEPTED AND AGREED TO:

This 27 14 day of

April, 1945.

Mildred C. Ransom

aw D

C H Woods
F H Lewis
E. D. THOMPSON

1324

GOVERNMENT EXHIBIT NO. 17-E

STANDARD OIL COMPANY OF CALIFORNIA

San Francisco, California
March 19, 1945

GOVERNMENT EXHIBIT NO. 17-F.

LEASE

Dated March 19, 1945

1. Mildred C. Runyon, a married person dealing in her separate property

Lessor,

hereby leases to STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Lessee, for the term commencing on the first day of April, 1945, and ending on the 31st day of March, 1955, the following described premises in the City of Hermiston County of Umatilla, State of Oregon:

M.C.R.

All of Lots 1, 2, 3, 4, 5 and 6 in Block 5 of the Original Town, now City, of Hermiston,

together with all improvements and fixtures located thereon, as more particularly set forth and described in Exhibit "A" attached hereto and made a part hereof.

M.C.R.

2. Lessee agrees to pay Lessor rental for the use and occupancy of the leased premises as follows:

In advance on the first day of each and every month for the full term hereof, the sum of Seventy and no/100 Dollars ($70.00).

provided, however, that no rentals shall be due and payable hereunder until the date on which possession of the leased premises has been delivered to Lessee. Lessee shall have the right to set off against rental payable hereunder any rentals owing Lessee by Lessor under the terms of any agreement in effect between Lessee and Lessor.

3961 P

3. Should any of the improvements, fixtures or equipment referred to in paragraph 1 hereof, become obsolete or unfit for the purposes intended, Lessee shall have the right to return any such improvements, fixtures, or equipment to Lessor at Hermiston, Oregon and to replace the same with such improvements, fixtures or equipment as Lessee may deem necessary; title, however, to such new improvements, fixtures or equipment to remain in Lessee.

~~4. Lessor agrees during the term of this lease or any extension thereof to maintain in good condition and repair all service station equipment, facilities, yards, driveways, and other improvements installed or made by Lessor on the leased premises.~~ m.c.R.

5. Lessor agrees to insure the leased premises and all property placed thereon by Lessor against loss by fire. In the event said premises or property are destroyed wholly or in part by any cause during the term hereof, then Lessor shall forthwith re-enter said premises and shall with diligence repair the destroyed portion or portions of said premises or property. If, however, the premises or the destroyed portion thereof becomes untenantable in the opinion of Lessee, then the rent shall cease until such time as they are again, in the opinion of Lessee, tenantable. Should Lessor neglect forthwith to restore said premises to the same condition as they were prior to their destruction, Lessee shall, at Lessee's option:

(a) Repair said premises, deducting the cost thereof from rents accruing, with reasonable interest allowance for monies advanced, or

(b) Terminate this lease.

Notwithstanding the foregoing, Lessor shall not be obligated to restore or repair any improvements, fixtures or equipment placed on the leased premises by Lessee.

6. Lessee shall have the right at any time during Lessee's occupancy of the leased premises, or within a reasonable time thereafter, to remove any and all buildings, improvements, fixtures and equipment placed by Lessee or by Lessee's predecessor in interest, in, under or upon the leased premises or acquired by Lessee whether before or during the term hereof, but Lessee shall not be obliged to do so.

~~7. Lessee shall pay all taxes levied or assessed during the term of this lease on any facilities located on the leased~~ premises while the same are owned by Lessee. All other real ~~or personal~~ property taxes or assessments, including all ~~street improvements or other special taxes or assessments, shall be paid by Lessor.~~ m.c.R

8. Lessee shall have the right during the term of this lease to rearrange or remodel any improvements, trade or other fixtures, structures, buildings, or equipment on said leased premises; to construct and maintain on the leased premises such other buildings, structures, improvements or equipment as Lessee may desire, and to remove the same

~~street improvements or other special taxes or assessments, shall be paid by Lessor.~~ m.c.R

8. Lessee shall have the right during the term of this lease to rearrange or remodel any improvements, trade or other fixtures, structures, buildings, or equipment on said leased premises; to construct and maintain on the leased premises such other buildings, structures, improvements or equipment as Lessee may desire, and to remove the same or any part thereof at will; and to cut curbs, construct roadways and use sidewalks for vehicles to pass to and from the leased premises. In the event it is or becomes unlawful to erect, operate or maintain on the leased premises, or any part thereof, a service station, or facilities necessary or convenient to the conduct of the same; or to store thereon or to sell therefrom any gasoline or other petroleum product or other goods marketed generally by Lessee from time to time; or if it shall be or become unlawful to construct or maintain approaches to said service station by reason of any statute, ordinance, or other regulation; or if any part of the leased premises is condemned for public or quasi-public purposes; or if there is a highway or street change in the vicinity of the leased premises, so that in the opinion of Lessee it shall become impracticable or unprofitable to construct, maintain, or operate said service station on the leased premises, then Lessee shall have the right to terminate this lease by giving Lessor ten (10) days' notice in writing of such termination.

9. Every provision hereof imposing an obligation on Lessor is a material inducement and consideration for the execution of this lease by Lessee, and any breach, violation, or failure with respect thereto by Lessor shall entitle Lessee to terminate this lease forthwith by giving Lessor written notice of such termination, and no waiver by Lessee of any such breach, violation, or failure, shall waive any continuing, subsequent, or other breach, violation, or failure.

10. If any tax or charge is hereafter imposed upon Lessee, pursuant to any so-called Chain Store Tax Law hereinafter enacted by any governmental authority, for or on account of the operation of Lessee's service station on the leased premises, Lessee may terminate this lease at any time on ninety (90) days' notice to Lessor served after the enactment of such law.

11. If Lessee shall hold over after the expiration of the term of this lease, or any extension thereof, such tenancy shall be from month to month only and upon all the terms, covenants, and conditions hereof.

1376

~~4.~~ m.c.R.

4. Lessee agrees during the term of this Lease to maintain in good condition and repair that certain equipment as listed on Exhibit "B" attached hereto and made a part hereof. Lessor agrees during the term of this Lease to maintain in good condition and repair all buildings, other facilities, yards, driveways, and other improvements installed on the above demised premises. ~~692~~

7. Lessee shall pay all taxes levied or assessed during the term of this lease on any facilities located on the leased premises while the same are owned by Lessee; In addition: Lessee shall pay all real property taxes levied during the term of this lease. All other taxes and or assessments, including street improvements or special taxes shall be paid by lessor. ~~693~~

m.c.R.

3961

M.C.R.

12. ~~Lessee may extend this lease for a further period of _____ years by giving Lessor notice in~~ writing of Lessee's intention so to do at any time prior to the expiration of the term hereof, and upon the giving of such notice this lease shall be extended as above provided.

13. Lessee may terminate this lease at any time during the term hereof, or any extension thereof, by giving Lessor thirty (30) days' prior written notice of intention so to do.

14. Lessee, while in possession, shall have the prior right to buy the whole or any part of the leased premises or any larger parcel of which the leased premises are a part. If Lessor receives from a third party an acceptable bona fide offer to buy such property, Lessor shall forthwith give Lessee written notice of such offer. Lessee shall have thirty (30) days from the receipt of such notice to buy such property at the terms of such offer relating to such property, or at such lesser terms as Lessor and Lessee may agree upon. If Lessee fails to exercise this option and Lessor sells such property to a third person, such sale shall be made subject to this lease.

15. All rentals payable hereunder shall be paid to Mildred C. Ransom unless and until Lessor designates some other party to receive said rentals.

16. Written notices to be given by Lessee to Lessor hereunder shall be addressed to Lessor at Hermiston, Oregon Written notices to Lessee hereunder shall be given to Lessee at Old National Bank Building, Spokane, Washington All notices shall be deposited in the United States Post Office, properly addressed as aforesaid, postage fully prepaid, for delivery by registered mail.

17. Execution of this lease by Lessor constitutes an offer which shall not be deemed accepted by Lessee until Lessee has executed this lease and delivered a duplicate original thereof to Lessor.

18. This lease shall bind and inure to the benefit of the successors and assigns of Lessee, and shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of Lessor.

Hermiston, Oregon Written notices to Lessee hereunder shall be given to Lessee at Old National Bank Building, Spokane, Washington All notices shall be deposited in the United States Post Office, properly addressed as aforesaid, postage fully prepaid, for delivery by registered mail.

17. Execution of this lease by Lessor constitutes an offer which shall not be deemed accepted by Lessee until Lessee has executed this lease and delivered a duplicate original thereof to Lessor.

18. This lease shall bind and inure to the benefit of the successors and assigns of Lessee, and shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of Lessor.

IN WITNESS WHEREOF, these presents are hereby signed in triplicate by the parties hereto.

Mildred C. Ransom

Mildred C. Ransom — *Lessor*

Lessor

STANDARD OIL COMPANY OF CALIFORNIA,
Lessee

W. J. Watson

Attorney in fact.

B-480-1
(Existing Station)
(2-44)

Lease

2330

1372

SS. 3961-AD

GOVERNMENT EXHIBIT NO. 17-G

LEASE

This Indenture, dated the 19th day of March 19 45, by and between Mildred C. Ransom, a married person dealing in her separate property of Hermiston, Oregon, hereinafter called "Lessor", and STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Lessee".

WITNESSETH:

That for the term and upon the terms and conditions set forth in that certain written lease agreement, bearing date March 19, 1945, from Lessor to Lessee, all of which terms and conditions are hereby made a part hereof, as fully and completely as if herein specifically set out in full, Lessor has leased, demised and let, and does hereby lease, demise and let unto Lessee, the following described real property, situate, lying and being in the City of Hermiston, County of Umatilla, State of Oregon, more particularly described as follows, to-wit:

All of Lots 1, 2, 3, 4, 5 and 6 in Block 5 of the Original Town, now City, of Hermiston, together with all improvements and fixtures located thereon, as more particularly set forth and described in Exhibit "A" attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this instrument.

Mildred C Ransom
Mildred C. Ransom

CTIN

STANDARD OIL COMPANY OF CALIFORNIA

By
Attorney in fact.

[fol. 2333] GOVERNMENT EXHIBIT No. 17–H

Note

$10,000.00 Hermiston, Oregon March 23, 1945

For value received, I promise to pay to the order of Standard Oil Company of California, a corporation, the sum of Ten Thousand Dollars, in equal monthly installments of $100.00 each, commencing April 1, 1945, in lawful money of the United States of America, without interest. In case of default in the payment of any installment, the entire unpaid balance shall, at the election of the holder of this note, become immediately due and payable. In case suit is commenced for the collection of any sum due hereunder, I promise to pay, in addition to the costs provided by statute, a reasonable sum as attorney's fees.

Under date of March 19, 1945, the maker of this note leased to the payee hereof, the lands, premises and property described in the mortgage securing this note, for the term of ten years, commencing April 1, 1945. If the first sixty equal monthly payments of $100.00 each, commencing April 1, 1945, on this note are made without default, no further payments shall be required on this note so long as the maker of this note does not default on said lease. Should she default on said lease, at any time after April 1, 1950, then, and in that event, there shall immediately become due and payable on this note the sum of $60.00 per month for each and every month or fraction of a month of the then unexpired term of said lease.

(S.) Mildred C. Ransom.

[fol. 2334] GOVERNMENT EXHIBIT 17–I

Real and Chattel Mortgage

This Indenture Witnesseth: That Mildred C. Ransom, a married person dealing in her separate property, party of the first part, for and in consideration of the sum of Ten Thousand Dollars ($10,000.00) to her in hand paid, the receipt whereof is hereby acknowledged, has bargained, sold and conveyed, and by these presents does bargain, sell and convey unto Standard Oil Company of California, a corpo-

ration, party of the second part, the following described premises, to-wit:

> Lots 1, 2, 3, 4, 5 and 6 in Block 5, in the Original Town, now City, of Hermiston, as located in the Northwest quarter of the Southwest quarter of Section 11, Township 4 North, Range 28; all being East of the Willamette Meridian, in the County of Umatilla, and State of Oregon;

together with the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining; also the following personal property now on said premises, to-wit:

> That certain wood-frame and stucco Garage Building as now situate on the above demised premises, together with the Offices, Show Room and Rest Rooms used in connection with the Service Station as installed thereon, complete with Canopy, Pump Block and Slabs including Curb Cuts and Approaches thereto and equipped with that certain equipment listed below:
>
> 3 550 gal. underground tanks.
> 1 model 750F Aro grease gun.
> 1 model 700F Aro grease gun.
> 1. model 535F Aro grease gun.
> 1 model 816FG Aro grease gun.
> 1 model 865FG Aro grease gun.
> 1 model 125j Aro Chassis gun.
> 3 model 120J Aro grear lub gun.
> 1 model 200 Aro gun rack.
> 2 model A34 Hallett hoists.
> 3 model 700 Wayne pumps.
> 2 model W376 Wayne compressors.
> 4 30 gal. Wayne lubsters.

[fol. 2335] to have and to hold the same, with the appurtenances, unto the said party of the second part, its successors and assigns, forever.

This conveyance is intended as a mortgage to secure the payment of the sum of $10,000.00, in accordance with the tenor of a certain note of even date herewith, payable at the rate of $100.00 on the first day of each month hereafter commencing April 1, 1945.

Until said note is fully paid as provided by the terms of

said note, the first party shall keep said personal property and the improvements on said lands insured against fire in the sum of $10,000.00 in some safe, reliable insurance company, with loss payable to second party as its interests may appear, and she shall deliver such insurance policies to second party. On each April 1st hereafter, commencing April 1, 1946, first party may, at her option, reduce said insurance by not more than $1,000.00.

Now, if the sums of money due upon said note shall be paid according to agreement therein expressed, this conveyance shall be void; but in case default shall be made in payment thereof as above provided, then the said party of the second part, and its legal representatives may sell the property and premises above described, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law, and out of the money arising from such sale, retain the said principal and interest together with the costs and charges of making such sale and a reasonable sum as attorney's fees, and the over-plus, if any there be, pay over to the said party of the first part, her heirs or assigns; and the said party of the first part, for herself, her heirs, executors and administrators, does covenant and agree to pay the said party of the second part, its successors and assigns, the sums of money due upon said note, accord-
[fol. 2336] ing to agreement therein expressed, together with the costs and charges of sale and reasonable attorney's fees, and that if the proceeds of the sale of the mortgaged property shall be insufficient to pay the same, the deficiency may be recovered out of any other property of the mortgagor.

Witness, my hand and seal this 23rd day of March, 1945.

(S.) Mildred C. Ransom.

Witness: J. R. Raley, C. M. Moore.

STATE OF OREGON,
County of Umatilla, ss.

On this 27th day of April, 1945, before me, J. R. Raley, the undersigned officer, personally appeared Mildred C. Ransom, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein mentioned.

GOVERNMENT EXHIBIT NO. 18

Before they use the money to [illegible]

MEMORANDUM

San Francisco, California
July 10, 1946

JUL 11 1946

This will confirm your verbal authority to close on this loan in question.

E W

LOS ANGELES [illegible]
[illegible] BROTHERS
[illegible] AND HAYWOOD
[illegible], CALIFORNIA

SS 1139

MR. E. J. McCLANAHAN
Building

Proposal: Lease site and existing station. Reconstruct improvements and facilities (2 Party).

Operation: Dealer.

Location: S. W. corner 135 feet on Slauson by 139 feet on Maywood, Maywood, California.

Section of City: Westerly.

Estimated Monthly Gasoline Sales: 19,158 gallons

Brand Previously Handled: Texas.

Lease from Dealer: Term: 3 years undisturbed plus 7 ½ years with 30 day

[illegible]: Westerly.

Estimated Monthly Gasoline Sales: 19,158 gallons

Brand Previously Handled: Texas.

Lease from Dealer: Term: 3 years undisturbed plus 7 ½ years with 30 day cancellation right by Company.
Rent: $125.00 a month (Offset).

Sublease to Dealer: $125.00 a month (Offset).

Special Allowance: Company to give 1/2¢ a gallon allowance on all gasoline sold up to 360,000 gallons a year. This amount to be credited against investment and totally amortized and thereafter paid to dealer.

Investment: $21,600

	Per Month	Per Gallon
Carrying Cost: Rent	$125.00	.65¢
Depreciation	180.00	.94
Total Carrying Cost	$305.00	1.59¢
Return from Dealer:	125.00	.65¢
Deficit	$180.00	.94¢
Special Allowance	107.00	.56¢
Total Deficit	$287.00	1.50¢

Netback for Chart Computation: 8.30¢ a gallon.

Minimum Allowable Netback: 8.08¢ a gallon.

Endorsement: Appropriations Committee

1385

GOVERNMENT EXHIBIT NO. 18-C

STANDARD OIL COMPANY OF CALIFORNIA

July 9, 1946

Mr. A. M. Gross
3438 East Slauson Avenue
Maywood, California

Dear Sir:

Reference is made to your lease to the undersigned dated June 14, 1946, covering premises situated at the southwest corner of Slauson and Maywood, Maywood, California. This will confirm our agreement as follows:

A. The rental under said lease shall be supplemented and adjusted as follows:

1. On July 19th of each year of the term of said lease and commencing July 19, 1947, the undersigned will pay you as additional rent an amount computed at the rate of $15.00 per thousand gallons of gasoline delivered to said premises by the undersigned since the preceding July 20th, provided that, if the total of said deliveries exceeds 360,000 gallons, such excess over 360,000 gallons shall be disregarded.

Maywood, Maywood, California. This will confirm our agreement as follows:

A. The rental under said lease shall be supplemented and adjusted as follows:

1. On July 19th of each year of the term of said lease and commencing July 19, 1947, the undersigned will pay you as additional rent an amount computed at the rate of $15.00 per thousand gallons of gasoline delivered to said premises by the undersigned since the preceding July 20th, provided that, if the total of said deliveries exceeds 360,000 gallons, such excess over 360,000 gallons shall be disregarded.

2. Any obligation under the foregoing shall terminate upon any termination of said lease, provided that, if such termination occurs other than on July 19th of any year, the adjustment provided in paragraph 1 hereof shall be made on and as of said termination date rather then on July 19th thereafter.

B. The undersigned shall, within one year of the date hereof and subject to the reasonable availability and continued availability of manpower and materials, expend not less than $21,600.00 in the making and installation of automobile service station facilities and improvements upon said premises. Such facilities and improvements shall be of a type and design determined by the undersigned. Said sum of $21,600.00 shall be repaid by you to the undersigned on or prior to any termination of our rights under said lease of June 14, 1946, and in any event on or prior to October 19, 1956. Any and all amounts payable to you under any provision of this letter agreement shall be credited upon said $21,600.00 until the full amount of $21,600.00 has been paid.

1354

In Witness Whereof, I have hereunto set my hand and official seal.

(S.) J. R. Raley, Notary Public in and for the State of Oregon, residing at Hermiston. (Seal.) My commission expires July 6, 1948.

[fol. 2337] STATE OF OREGON,
County of Umatilla, ss.

I, Mildred C. Ransom, being first duly sworn, say that I am the sole and exclusive owner of the property described in this mortgage, and in lawful possession thereof; that the same is paid for in full; and that there are no incumbrances or liens of any kind whatsoever existing at this date against the said property.

(S.) Mildred C. Ransom.

Subscribed and sworn to before me this 27th day of April, 1945. (S.) J. R. Raley, Notary Public in and for the State of Oregon, residing at Hermiston. My commission expires July 6, 1948.

[fol. 2338] I, M. K. Ransom, husband of the mortgagor, Mildred C. Ransom, hereby join in the foregoing mortgage so far as my curtesy interest in the mortgaged real estate is concerned, but do not assume liability for any deficiency.

(S.) M. K. Ransom.

STATE OF OREGON,
County of Umatilla, ss:

On this 27th day of April, 1945, before me, J. R. Raley, the undersigned officer, personally appeared M. K. Ransom, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal.

(S.) J. R. Raley, Notary Public in and for the State of Oregon, residing at Hermiston. My commission expires: July 6, 1948.

Dgeade Penton. C. M. Moore, T. H. Paine.

Metzes and Bgg: Attached.

Remarks: This station is well located on a strategic intersection in an area where our Company enjoys less than 1% total available gasoline gallonage. The operators are successful business men, and the unit will give us very desirable representation.

This proposal was approved in principle by you in accordance with terms outlined in our memorandum of June 10, 1946, attached, and revisions above were recently discussed with you.

E. D. THOMPSON

EDT

2340

1386

STANDARD OIL COMPANY OF CALIFORNIA

C. In the event that we exercise our option to extend said lease to October 19, 1956, and in the event that ~~less than~~ 1,440,000 gallons of gasoline shall not have been delivered by us to said premises prior to October 19, 1956, said lease shall be automatically continued in full force and effect for a further term of five years or if earlier until the gasoline so delivered after July 19, 1946 equals 1,440,000 gallons; provided that after October 19, 1956 we shall have the right to terminate said lease upon 30 days written notice given at any time.

Very truly yours,

STANDARD OIL COMPANY OF CALIFORNIA

By A. J. Watson

Accepted and Agreed to this

10 day of July, 1946.

A. M. Gross
(A. M. GROSS)

(See paragraph D attached hereto)

TYPED BY	
APPROVAL	DESCRIPTION APPROVED
P. C. MADISON	R. OF W. APPROVAL
CHECKED BY	APPROVED
ATTORNEYS	APPROVED
NOTE PREVIOUSLY	MANAGER'S APPROVAL
APPROVED BY	FOR EXCHANGE E. O. THOMPSON

2342

GOVERNMENT EXHIBIT NO. 19

MEMORANDUM

San Francisco, California
February 15, 1945

LOAN $2,000 - INVEST $990.00
NEW CAR DEALER, "BURNIE" HYLAND
HUDSON DISTRIBUTOR, WEST 1126
SECOND AVE., SPOKANE, WASHINGTON

MR. E. J. McCLANAHAN

It is recommended Company loan Mr. Hyland $2,000.00 to assist him in remodeling his offices and the modernizing of his lubrication facilities; invest $990.00 in the purchase of certain salvable lubrication equipment; sign a 59 months Lease, Sublease and Dealer Agreement on a 2 party basis -- Company to receive 100% return of loan in 59 equal monthly payments absorbing the investment of $990.00; the loan and investment to be made immediately.

The following proposal is within Dealer Sales Authority except that our Lease will not be first Lien on the Property.

Name of Dealer: "Burnie" Hyland, Hudson Distributor.

Location: Corner 2nd Ave. and Jefferson St. (West 1126 2nd Ave.), Spokane, Washington.

Tenure:

Term: 2/1/45 to 12/31/49 with guaranteed sales lub oils and greases 55,000 gallons over a 59 month period.

Rental:
Company - $50.00 per month for 59 months
Dealer - $83.90 " " for 59 months.
Net Rental to Company - $33.90.

Cancellation: By Company on 30 days notice.

Option: None

Special Provisions: Company to give Bill of Sale on lubrication equipment to be purchased from Dealer.

Loan: $2,000.00

Re-Payment: 100% - 59 equal monthly payments - no interest.

Security: None.

Investment In Facilities: $990.00 (3.8¢ per monthly gallon lub oils and grease)
Company's return on investment -- 66 2/3%

Absorption: $990.00 over 59 months, $16.95 per month.

Average Monthly Gallonage:

	Lub Oils	Grease
Present	380 gals.	400 lbs.
Normal	450 "	600 "

This totals 126 bbls. annually and is split at present:- Oil - 70% Pennoil, 20% Kendall, 10% Standard. Grease - 100% Pennzoil.

No gasoline sold at present. Agreement is for all of dealers requirements and guarantees us 55,000 gallons oils and greases.

2343

1389

Remarks: Mr. Hyland is 52 years of age and has been in the automobile business for the past 20 years, 10 years of which was with the Hudson Motor Co. He is at present the Hudson Distributor for Inland Empire with 22 sub-dealers and has promised to assist us to gain all of these distributors 100% and is confident with his help that we can sign a minimum of 15. Mr. Hyland has also been very active in Shrine work for many years. Dunn and Bradstreet report on him dated 12/27/44 follows:

Cash on hand	$17,000	Liabilities -	None
Parts & Inventory	7,905		
Mchy. & Fixtures	10,300		
Total Assets	$35,205	Net Worth -	$35,205

Mr. Hyland's Service Department has 10 employees and performs all the work he can handle. He is starting his business with adequate capital and is transacting an active volume. The building he is occupying is in the automotive district on a well traveled street. The rent is $500.00 per month on a 5 year lease and the last 3 months rent has been paid in advance.

Because of Mr. Hyland's financial standing we feel Company's investment will be adequately protected by making the $8,000 loan and secure a receipt form from him whereby he agrees to pay back the loan in full in 59 equal monthly payments.

Acquisition of this desirable new car dealer account admirably fits Spokane's Representative Objective.

May we have your approval?

E. D. THOMPSON

Edt

OK C Mack 2/17/45

[fol. 2345] GOVERNMENT EXHIBIT No. 19-D

Dealer Agreement

Dated January 5, 1945.

1. Standard Oil Company of California, a corporation, hereinafter called "Company," agrees to sell to Burnie Hyland hereinafter called "Dealer," and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at West 1126 2nd Avenue, Spokane, Washington. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity.

2. Deliveries shall be made in Company's customary manner. The price Dealer shall pay Company for petroleum products hereunder shall be Company's posted price to its dealers generally at time and place of delivery hereunder for the particular product and type of delivery involved. Terms shall be net cash at time of delivery, except at Company's option.

3. The products covered by this agreement shall be sold by Dealer as the products of Company and only under Company's regular trade-marks or brands for such products and shall not be sold, or offered for sale, at prices lower than Company's authorized retail prices therefor at time and place of sale. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging the trade for gasoline or lubricating oil sold to Dealer hereunder, is is agreed that the design, size, and location of such signs shall be subject to Company's approval. Company shall be excused from making deliveries hereunder while prevented from or hindered in doing so in its customary manner due to causes beyond its control. Whenever such causes require that deliveries of any product hereunder be restricted, Company reserves the right to restrict deliveries of such product to Dealer proportionately with restrictions on deliveries of such products to other comparable dealers in Dealer's vicinity.

4. Dealer shall pay to Company for the use of Company's facilities on said premises, as follows:

5. This agreement shall be operative during the period commencing February 1, 1945, and ending December 31, 1949, and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first 6 months of any contract year, or at the end of any such year, by giving to the other at least 30 days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination of [fol. 2346] any lease which Company may have upon the premises covered by this agreement, or upon the termination of any sublease between Dealer and Company covering said premises.

6. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees to protect, defend, and hold harmless the Company against all claims for damage to property (including Dealer's property), or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

7. In the performance of this agreement Dealer is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his conduct in the performance of this agreement. Company reserves no right to exercise any control over any of Dealer's employees and all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evi-

dence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

8. Any tax, or the amount thereof, now or hereafter imposed, levied, or assessed by any governmental authority upon, measured by, incident to, or as a result of the transaction herein provided for, or the transportation, production, or manufacture of the goods, the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for.

9. This agreement shall not be assignable without the prior written consent of the Company. The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default or the waiver of the default of any other provision hereof. This agreement shall, as of the commencement date hereof, terminate all prior Dealer Agreements and Agency Agreements between Dealer and Company respecting the premises covered by this agreement.

10. Company shall have the right at any time to remove from said premises any equipment or improvements placed thereunder or thereon which are now or hereafter owned by Company.

11. Execution of this agreement by Dealer constitutes an offer which shall not be deemed accepted by Company until Company has executed this agreement and delivered a duplicate original to the Dealer.

Burnie Hyland, Dealer; Standard Oil Company of California, Company, by W. G. Watson, Attorney in fact.

Ken Dotes, F. T. J., p. 1, J. E. Stand, A. E. Edward, A. N. Huff.

Dealer Agreement. For Use in California, Oregon, Washington, Nevada and Arizona

D. The provisions of paragraph C. with reference to the extension of said lease, for a period not to exceed 5 years on and after October 19, 1956, shall be contingent and conditioned upon your obtaining an extension of the lease now held by you under date of September 26, 1941, between C. A. Webb and Lila F. Webb, husband and wife, as lessors, and yourself as lessee, for an additional period of 5 years, upon the same terms and condition as are now contained in said lease. In the event you shall not obtain such an extension of your lease, then it is understood and agreed that you shall pay to the undersigned such balance as shall remain due and not credited upon the sum of $21,600.00 in the manner and under the terms of this letter agreement.

[fol. 2351] GOVERNMENT EXHIBIT No. 20–A

File SS. 5127–AD

This Agreement of Conditional Sale between Standard Oil Company of California, a corporation, hereinafter called "Seller," and Ray A. Wright, residing or doing business at ——, in the City of Parma, County of Canyon, State of Idaho, hereinafter called "Buyer":

Witnesseth:

1. Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, subject to and upon the terms and conditions hereinafter set forth, the following personal property:

Kind of personal property
1—Atlas Fast Battery Charger, Price $210.00.
S.S. 23 #433701—9-17-45.
Sales Tax; None.

Total Selling Price including Sales Tax	$210.00
Less down payment of 3⅓% to be paid by Buyer on the date hereof, the receipt of which is hereby acknowledged by Seller	$ 7.00
Sub Total	$203.00
Plus interest and/or carrying charge on said sub total sum for a period of months at the rate of ½ or 1% a month	None
Balance due Seller	$203.00

Said balance to be paid by Buyer in equal monthly installments of Seven and no/100 dollars ($7.00) each, on the first day of each and every calendar month, commencing on the first day of October, 1945, until all of said balance shall have been fully paid. All payments shall be made to Seller at its office at Old National Bank Building, Spokane, Washington, or at such other place as Seller may from time to time direct.

2. Said personal property is to be located on the following described real property or premises, located in the County of Canyon, State of Idaho:

Lots 4 and 5 of Block 28, according to the Plat of a por-

tion of the Town of Parma, Idaho, filed January 26th, 1901, in Book 1 of Plats, page 13 in the office of the County Recorder of Canyon County, Idaho, together with a tract of land in the Northeast Quarter (NE¼) of the Southwest Quarter (SW¼) of Section 9, Township 5 North, Range 5 West of the Boise Meridian, Idaho, making a tract 140 x 150 feet in size, and more particularly described as follows: [R. A. W., F. H. P.]

Beginning at the North corner of said Lot 4 of said Block 28, thence running in a Southeasterly direction along the Southwesterly line of Grove Street, a distance of 150 feet to Fourth Street; thence running in a Southwesterly direction along the Northwesterly line of Fourth Street a distance of 140 feet to an alley; thence running in a Northwesterly direction on a line parallel with the Southwesterly line of Grove Street a distance of 150 feet to the Northwesterly line of Lot 4 extended; thence running in a Northeasterly direction along the extended Northwesterly line of said Lot 4 and on a line parallel with the Northwesterly line of Fourth Street a distance of 140 feet, to the place of beginning, Excepting from the Above, the following: Beginning at the North corner of the above mentioned Lot 4 of Block 28, according to said Plat; thence running in a Southeasterly direction along the Southwesterly line of Grove Street a distance of 100 feet to the real point of beginning; thence continuing Southeasterly on said line a distance of 50 feet to Fourth Street; thence running in a Southwesterly direction on and along the Northwesterly line of Fourth Street a distance of 50 feet; thence running in a Northwesterly direction on a line parallel with the Southwesterly line of Grove Street a distance of 50 feet; thence running Northwesterly a distance of 50 feet to the real place of beginning; together with all and singular the privileges, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

3. Delivery of said personal property is to be made to Buyer at Parma, Idaho, and the same shall be installed, used and maintained by Buyer on the premises described in paragraph 2 hereof only. Buyer shall not relinquish possession of said personal property, or remove, or suffer or permit the same, or any part thereof, to be removed from said premises, without first obtaining the written consent

of Seller so to do. It is the intention of Seller and Buyer that said personal property, and every part thereof, shall at all times be and remain the personal property of Seller until fully paid for, whatever may be the mode of its attachment to the realty or otherwise; and under no circumstances shall any of said personal property prior to such payment, be or be construed to be a fixture, or become a part of the freehold or leasehold.

4. Title to all of said personal property shall remain in Seller and not pass to Buyer until Buyer has fully paid in cash all sums herein provided to be paid by Buyer and has performed all of Buyer's obligations hereunder, Buyer, however, assuming all risks of loss of or damage to said personal property prior to full payment of the purchase price; but any loss, damage injury or destruction of said personal property, or any part thereof, however caused, shall not relieve Buyer of liability for payment of the full purchase price thereof, or of any liability hereunder.

[fol. 2352] 5. Buyer has thoroughly examined the personal property herein described and knows the condition thereof, and accepts the same in its condition as of this date, and such acceptance shall release and discharge Seller from any obligation to repair, improve, or restore said personal property in any manner or particular whatever. Buyer agrees to take good care of said property and keep it in good repair and operating condition at Buyer's own expense, to comply fully with all laws, ordinances, and regulations regarding the maintenance or use thereof, and to hold Seller free and harmless from any and all liability for violation of any law, ordinance or regulation, or for any damage to property, or for injury to or death of any person or persons, arising out of or in any way connected with the installation, maintenance and or use of said personal property. Seller may inspect the personal property at all reasonable times.

6. Seller may apply money received from Buyer hereunder either upon this contract, upon any other conditional sale contract, or account between Seller and Buyer, as Seller may elect, and the right of Buyer to make special application of payments is hereby expressly waived.

7. If Buyer fails to make any payment to be made hereunder on its due date, or otherwise fails in the performance or fulfillment of any obligation or undertaking of Buyer hereunder, or makes any default hereunder, Seller may, at its option, either (1) without notice to or demand of Buyer, and with or without aid of legal process, enter upon the premises where said property may be and remove and repossess said personal property and every part thereof, whether or not attached to the realty, and declare this instrument to be null and void, whereupon all payments actually theretofore made hereunder shall be retained by Seller as liquidated damages for the breach of this agreement; or (2) Seller may, at its option, declare the deferred balance of the purchase price and any and all other sums payable by Buyer hereunder, to be due and payable immediately, and may demand, and Buyer shall make, immediate payment thereof. It is agreed that no termination of this agreement upon default of Buyer shall release Buyer from payment of any sums due to Seller up to and including the date of such termination, it being hereby expressly agreed that such sums shall be due Seller as rental for the use, by Buyer, of said property, up to the date of such termination. Seller, in removing and retaking the personal property herein described, shall incur no liability to Buyer or any one else, in damages or otherwise, for any act done in removing said property or in the exercise of any right, privilege or remedy of Seller hereunder; nor shall the removal of any part of said personal property constitute an abandonment by Seller of the remainder thereof, which may be left in place without charge, until removed by Seller.

8. Without limiting the generality of any of the other provisions hereof, Buyer, at Seller's option, shall be deemed to have made default hereunder if Buyer be adjudicated a bankrupt, or become insolvent, or if a receiver be appointed for Buyer, or if Buyer make a general assignment or create a trust for the benefit of creditors or call a meeting of creditors to ask any accommodation of them, or if any interest of Buyer arising from this contract or in the personal property become encumbered or be assigned or transferred by Buyer voluntarily or otherwise without Seller's written consent to such encumbrance, assignment, or transfer, or

if Buyer shall vacate or abandon or be deprived of the possession of the above-described premises.

9. No failure or delay by Seller in exercising any of its rights hereunder shall prevent the exercise thereof by Seller at any time when Buyer may continue in default, and no waiver by Seller of any default or breach by Buyer, or acceptance by Seller of any overdue payment hereunder, shall operate as a waiver of any other prior, continuing, or subsequent breach by Buyer, or as a modification of this agreement in any respect.

10. Buyer agrees to pay promptly when due, any and all licenses, taxes and assessments which may be levied upon said personal property, and to keep the same at all times free and clear of liens and encumbrances. If Buyer should fail to do so, Seller shall have the right to pay the same, or remove the encumbrances, and Buyer agrees to repay Seller any moneys so expended on demand.

11. If any suit or proceeding be brought to recover any sum due Seller by Buyer, or to enforce any obligation of Buyer hereunder, or to recover possession of the personal property sold hereunder, Buyer will pay Seller a reasonable attorney's fee in an amount to be fixed by the court, and Seller's costs of suit.

12. No transfer, assignment, renewal or extension of this contract, or any interest therein, shall release Buyer from Buyer's obligation hereunder.

13. This contract shall constitute the entire agreement between Buyer and Seller, and no other agreement, oral or written, express or implied, shall limit or qualify its terms. Time is of the essence of this agreement, and of every part thereof.

14. Seller may, at any time, assign this contract, or any right hereunder, and all of the terms hereof for the benefit of the Seller shall inure to the benefit of Seller's successors and assigns.

In witness whereof, the parties hereto have executed this agreement in triplicate as of the 17th day of September, 1945.

Standard Oil Company of California, Seller, by F. H. Paine; Ray A. Wright, Buyer.

R. T. Vivian.

Mr. Burnie Eyland
2nd & Jefferson
Spokane, Washington

We have received your check in the amount of $1,288.10 and are attaching the loan agreement dated February 14, 1945, and the Bill of Sale for equipment dated January 5, 1945.

On January 5, 1945, we entered into a lease with you whereby we were to furnish certain monies, and in return, receive certain considerations from you. We quote from this executed lease of January 5, 1945:

> "The term of this agreement shall be from February 1, 1945, to December 31, 1949, but if during said period Dealer shall not have purchased from Company 33,000 gallons of lubricating oils and greases, this contract shall continue in full force and effect until such time as said number of gallons of lubricating oils and greases have been purchased by Dealer from Company."

It is understood and agreed that the delivery to you of these two instruments will in no way affect the above quoted provision.

It is also agreed by us that we will continue to repair and maintain the equipment which was mentioned in the above Bill of Sale for the balance of this contract, more specifically enumerated as follows:

2 - Grayco Waste Oil Containers #1036
2 - Grayco Gear Lub. Containers #1036
1 - Grayco Work Cabinet and Order Desk
1 - Overhead Chassis Lubricator

~~1 - 5 H.P. Divilbis C~~

K Oates

53

JES
K Oates
E. D. T[illegible]

By [illegible]

AGREED TO:

[illegible]

2347

GOVERNMENT EXHIBIT NO. 19-E

STANDARD OIL COMPANY OF CALIFORNIA

Spokane, Washington
December 3, 1946

GOVERNMENT EXHIBIT NO. 19-F

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called the Party of the First Part, for and in consideration of the sum of One and no/100 Dollars ($1.00) and other good and valuable consideration, to it paid by BURNIE HYLAND, an individual dealing in his separate property, the Party of the Second Part, the receipt whereof is hereby acknowledged, does by these presents bargain, sell and deliver unto said Party of the Second Part

2 - Grayco Waste Oil Containers #1036
2 - Grayco Gear Lub. Containers #1036
1 - Grayco Work Cabinet and Order Desk
1 - Overhead Chassis Lubricator
1 - Masonite Background - 40' X 10'
1 - Ezy Passenger Car Hoist
1 - Rotary Passenger Car Hoist
1 - 5 H.P. Divilbis Compressor

now located on certain property described as West 1126 - 2nd Avenue, City of Spokane, County of Spokane, State of Washington.

TO HAVE AND TO HOLD said personal property unto the said Party of the Second Part, its successors and assigns, forever

IN WITNESS WHEREOF, STANDARD OIL COMPANY OF CALIFORNIA has executed this instrument this 16th day of January, 1947.

STANDARD OIL COMPANY OF CALIFORNIA

By W. J. Watson
Attorney in fact

J. E. S.
Ken Dogles
A. B. Edwards
E. D. Tic...

2348

GOVERNMENT EXHIBIT NO. 20

MEMORANDUM

San Francisco, California
June 22, 1945

LOAN $7,830
WRIGHT AND ROBERTS
SS 5127-AD
PARMA, IDAHO

MR. E. J. McCLANAHAN:

It is recommended Company loan Messrs. Ray Wright and Elmer C. Roberts - owners and operators of Station 5127-AD, Parma, Idaho, $7,830 to enable them to pay off existing real estate mortgage on the property in the amount of $6,280 and to assist in the financing of an automobile display room, which is at present being built with PAW approval. Company loan to be secured by mortgage and promissory note with $7,500 to be paid in equal monthly payments over 120 month period at no interest. In addition, Company is to purchase existing facilities owned by Messrs. Wright and Roberts in the amount of $1,000.00, Company to receive no return on this investment. By making this loan and investment, Company will receive a 10 year lease with a 10 year option on the only Standard Oil Company outlet in this community and on which Company has no assured tenure at the present time.

The proposed transaction exceeds Dealer Sales authority inasmuch as the amount of the loan is over $5,000 and full return of the loan is not to be obtained.

Present Status of Account: Authorized Distributor Agreement May 1, 1944 - April 30, 1949
Dealer's rental - $3.00 per month

Proposed Loan: $7,830

Repayment: $7,500 at no interest in 120 equal monthly payments

Security: Mortgage on property and improvements
Appraisal: Land and Improvements $7,500 with the additional building that is under construction at the present time which will cost $2,550, the total value of the property will be increased to $10,050.

Proposed Ground Rental: $60.00 a month

Maximum Lease Commitment: 30 days

Maximum Assured Tenure: 240 months

Estimated Normal Sales: 6,000 gallons - sales under present allocation 5,000 gallons

Economics:

Rental	$60.00 a month	
Depreciation on Invest.	6.67 (150 mos.)	
Amortization on loan	65.25 (120 mos.)	
		$131.92
Return from Dealer: Loan Payment	62.50	
Rental	60.00	
		122.50
Deficit per month		$ 9.42
Deficit per gallon		.16¢

Messrs. Wright and Roberts have both had years of experience in the automotive and service station fields. Mr. Wright took over the operation of this station in May 1944 and shortly thereafter took in Mr. Roberts as his partner. Since the advent of their operation of this station sales have steadily increased to the point where 5,000 gallons per month is being realized. They have a full time service man employed and will employ 2 mechanics upon completion of the proposed additional building. Because of lack of space, these operators are unable to handle all the lubrication business that is available to them. In 1944 Mr. Wright entered into a real estate contract for the purchase of this property which at the present time has been reduced to $6,280. They have been offered $14,000 for the property but do not desire to sell since they intend to remain in business at this location permanently.

This station is the only service station in R. and V. Oil Company's field (Company's wholesale distributor) on which they do not have basic control and is the Company's only representation between Caldwell and Nyssa, a distance of 80 miles. If the proposal we have worked out is not concluded, it is felt certain that Messrs. Wright and Roberts will make a deal with competitors, possibly the General Petroleum Corporation since they are actively soliciting the account.

Because of the successful manner in which this station has been operated by these gentlemen, because of their future plans for enlarging the business, and the fact that Company will be able to retain representation at this location with a very small deficit, it is recommended that the deal as proposed be approved even though the full amount of the loan is not to be repaid. Financial statement as furnished shows the worth of the proprietorship as $4,325.44.

May we have your approval?

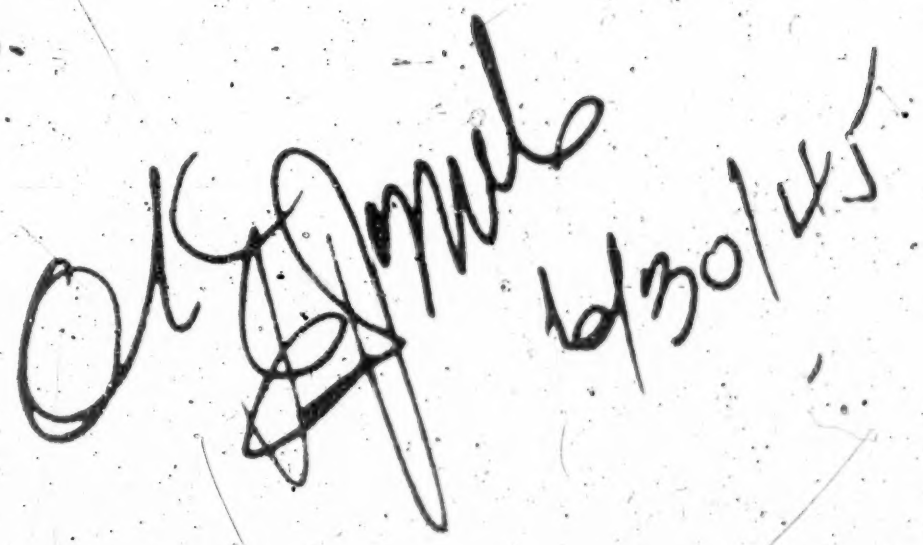
E. D. THOMPSON

EDT

4/25/45.

Lorbo Off-Road on security which with improvements will be $19,000 - plus the experience & the one owner to get about in & de trainer & over $4000.

T. K. Hartzine



[fol. 2353] GOVERNMENT EXHIBIT No. 20-B

This Indenture, Made and entered into this 3rd day of May, 1945, between Elmer C. Roberts and Fern S. Roberts, his wife, and Ray A. Wright and Bessie M. Wright, his wife, of the County of Canyon and State of Idaho, parties of the first part, (hereinafter called "mortgagors"), and the Standard Oil Company of California, a corporation, (hereinafter called "mortgagee"), party of the second part. [R. A. W. B. M. W. E. C. R. F. S. R.]

Witnesseth, That the said mortgagors, for and in consideration of the sum of Seven thousand eight hundred thirty and no/100 Dollars ($7830.00) in lawful money of the United States of America, in hand paid by the said mortgagee, the receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said mortgagee, its successors and assigns, all of the following described real estate, lying and being situate in the City of Parma, Canyon County, State of Idaho, to-wit:

Lots 4 and 5 of Block 28, according to the Plat of a portion of the Town of Parma, Idaho, filed January 26th, 1901, in Book 1 of Plats, page 13 in the office of the County Recorder of Canyon County, Idaho, together with a tract of land in the Northeast Quarter (NE¼) of the Southwest Quarter (SW¼) of Section 9, Township 5 North, Range 5 West of the Boise Meridian, Idaho, making a tract 140 x 150 feet in size; and more particularly described as follows:

Beginning at the North corner of said Lot 4 of said Block 28, thence running in a Southeasterly direction along the Southwesterly line of Grove Street, a distance of 150 feet to Fourth Street; thence running in a Southwesterly direction along the Northwesterly line of Fourth Street a distance of 140 feet to an alley; thence running in a Northwesterly direction on a line parallel with the Southwesterly line of Grove Street a distance of 150 feet to the Northwesterly line of Lot 4 extended; thence running in a northeasterly direction along the extended Northwesterly line of said Lot 4 and on a line parallel with the Northwesterly line of Fourth Street a distance of 140 feet, to the place of beginning, Excepting From the Above, the following: Beginning at the North corner of the above mentioned Lot 4 of Block 28, according to said Plat; thence run-

ning in a Southeasterly direction along the Southwesterly line of Grove Street a distance of 100 feet to the real point of beginning; thence continuing Southeasterly on said line a distance of 50 feet to Fourth Street; thence running in a Southwesterly direction on and along the Northwesterly line of Fourth Street a distance of 50 feet; thence running in a Northwesterly [fol. 2354] direction on a line parallel with the Southwesterly line of Grove Street a distance of 50 feet; thence running Northwesterly a distance of 50 feet to the real place of beginning; together with all and singular the privileges, tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold the same, to the said mortgagee, its successors and assigns forever, except as hereinafter stated.

This instrument is intended as a mortgage to secure the payment to said mortgagee, its successors and assigns, of the sum of money named above as the consideration hereof, in lawful money of the United States of America, evidenced by a certain promissory note of even date in the sum of Seven thousand eight hundred thirty Dollars, payable in installments of Sixty-two and 50/100 Dollars per month on or before the first day of each and every month, commencing with the month of June 1, 1945. [R. A. W. B. M. W. E. C. R. F. S. R.]

The mortgagors further covenant and agree with the mortgagee, its successors and assigns as follows:

First: That the mortgagors are lawfully seized of said premises in fee simple, free from all encumbrances, and that the mortgagors have good right and authority to sell, mortgage and convey said premises in manner and form as aforesaid, and that the mortgagors shall and will warrant and defend the same to the said mortgagee, its successors and assigns forever against the lawful claims and demands of all persons whomsoever.

Second: That the mortgagors shall and will keep the said premises free from any and all statutory liens of every kind, and shall not suffer or permit waste to be committed thereon, and shall not suffer or permit any matters or things to be done thereto which will in anywise impair or weaken the security of the mortgagee;

Third: That the mortgagors will pay said moneys, as expressed above, when from any cause the same shall become due:

Fourth: That the mortgagors will keep the buildings on said premises insured in one or more good and solvent [fol. 2355] insurance companies in at least the sum of Eight thousand eight hundred thirty Dollars, the said and all policy or policies of insurance covering said premises, or any part thereof, to provide that loss if any, shall be payable to the mortgagee, its successors and assigns, until the moneys secured hereby are fully paid, and shall deposit with the mortgagee all such policies of insurance to be retained by the mortgagee until the full debt secured hereby shall have been fully paid. [R. A. W. B. M. W. E. C. R. F. S. R.]

Fifth: That in case said mortgagors shall fail to deposit such policies of insurance, the mortgagee may procure such insurance and the mortgagors hereby covenant and agree to repay such party all moneys so paid, and this mortgage shall stand as security therefor.

Sixth: That in case any principal as provided above shall become due and remain unpaid, or there shall be a breach of any covenant or promise of the mortgagors herein contained, then the whole of the principal as provided above, and all moneys secured hereby, shall at the option of the mortgagee, immediately become due and payable and this mortgage may be foreclosed at any time thereafter, without notice of the exercise of such option being made in any manner to the said mortgagors or to anyone else for the whole of such moneys, and in case an action shall be brought to foreclose this mortgage, the mortgagors covenant and agree to pay such sums as the Court may adjudge reasonable as attorney fees in such suit or action, and the same shall be a lien upon said premises and this mortgage shall stand security for the same and also all costs and disbursements incurred by the mortgagee in said suit or action.

Seventh: That in case of an action being commenced to foreclose this mortgage under any of its provisions, on filing the complaint for such foreclosure, or at any time thereafter, upon motion of the plaintiff therein a receiver shall be appointed to take charge of the mortgaged premises at once and to hold possession of the same until the title to

said premises is vested in the purchaser thereof; and all [fol. 2356] rents and profits derived from said premises shall be applied after payment of the costs and expenses of said receivership, toward the debt secured hereby.

Now, if the moneys secured hereby shall be fully paid, as and when provided, and the covenants and agreements herein fully kept and performed, then this instrument to become void and of no further effect; but if default shall be made in the payment of any of the moneys secured hereby, as and when provided, or in case of the breach of any covenant or condition herein, then all moneys secured hereby shall become immediately due and payable, as aforesaid, and this mortgage may be immediately foreclosed at any time thereafter, and the said premises sold, and the proceeds of such sale applied to the payment of the costs and expenses of such foreclosure and sale, the moneys secured hereby, including attorney's fees for foreclosure, and all other costs and expenses which may be incurred under and in pursuance of the terms of this mortgage, and the residue, if any, shall be paid to the mortgagors. If the proceeds of such sale shall not be sufficient to pay the costs and expenses of such foreclosure and sale, the moneys secured hereby, including attorney's fees for foreclosure, as aforesaid, and all costs and expenses which may be incurred under and in pursuance of the terms of this mortgage, then the mortgagors hereby covenant and agree to pay such deficiency, and a deficiency judgment for such amount may be entered up forthwith.

In Witness Whereof, the parties of the first part have hereunto set their hands and seals the day and year first above written.

Elmer C. Roberts, Fern S. Roberts, Ray A. Wright,
Bessie M. Wright.

[fol. 2357] State of Idaho,
County of Canyon, ss:

On this 3rd of May, 1945, before me, Ernest Anderson, a Notary Public for said State, personally appeared Elmer C. Roberts and Fern S. Roberts, his wife, and Ray A. Wright and Bessie M. Wright, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Ernest Anderson, Notary Public in and for the State of Idaho, residing at Parma, Idaho.

[fol. 2338] GOVERNMENT EXHIBIT No. 20–C

Copy

Promissory Note

$7830.00. Parma, Idaho, May 3, 1945.

For value received, I, we, or either of us, promise to pay to the Standard Oil Company of California, a corporation, or order, at its principal place of business in San Francisco, California, the principal sum of Seven thousand eight hundred and no/100 Dollars, in lawful money of the United States of America, without interest, payable in monthly installments of Sixty-two and 50/100 Dollars ($62.50) each, on or before the 1st day of each and every month, commencing with the month of June 1, 1945; said monthly installments each being as and for a payment on account of the principal.

If default be made in any installment or monthly payment under this note, the entire principal sum shall become immediately due and payable at the option of the holder hereof.

If this note is not paid when due and it be placed with an attorney for collection, or if suit be instituted for its collection, I, we, or either of us, agree to pay in either case, besides costs and disbursements allowed by law, such additional sum as the court may adjudge reasonable as attorney fees in said suit or action.

It is also agreed that upon the payment of ~~one hundred~~ twenty (120) ~~monthly payments~~ of $62.50 each, totalling Seventy five hundred dollars ($7500.00), as and when hereinbefore provided, and the makers of this note not being in default, the payee of this note or its order, will give a full satisfaction of this note and release of record a real estate mortgage, dated June 1, 1945, given to secure the payment of this note.

Elmer C. Roberts, Fern S. Roberts, Ray A. Wright, Bessie M. Wright.

GOVERNMENT EXHIBIT NO. 21

MEMORANDUM

San Francisco, California
January 10, 1945

52 7478 / 4B

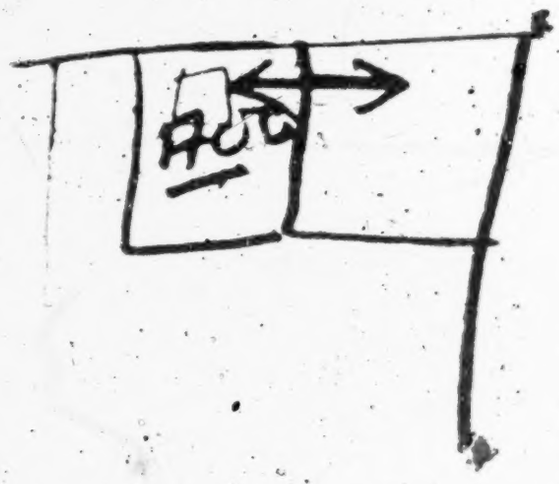
LOAN $22,500.00
LEASE SITE CONSTRUCT POST WAR SERVICE STATION
CHITWOOD AND STUDY
11TH STREET AND SOUTH PACIFIC AVENUE
SAN PEDRO, CALIFORNIA

MR. E. J. McCLANAHAN:

It is recommended Company loan Chitwood and Study $22,500.00 to enable them to purchase real property adjacent to their present owned site; sign a 10 year lease with a 5 year option, sublease and dealer agreement on a 2-party basis; and construct a post war service station at a cost of $13,922.00.

This proposal exceeds Dealer Sales authority. It has been reviewed by Mr. O'Kane and approved by Appropriations Committee:

Estimated Normal Sales:	12,500 gallons a month
Loan:	$22,500.00
Repayment:	100% plus 2-1/2% interest - $100.00 a month till station constructed, balance in 120 equal monthly payments.
Security:	First trust deed on real property being purchased- appraised at $20,000. Second trust deed on adjacent property having a value of some $28,000. Second trust deed to be released when dealer's equity in parcel being purchased reaches $7,500.
Facilities Investment:	$13,922.00
Ground Rental:	$100.00 a month (.8¢ a gallon)
Maximum Lease Commitment:	1/12 years
Maximum Assured Tenure: (including options)	15 years
Absorption Under Operating Agreements:	.53¢ a gallon
Net Back for Chart Computation:	8.772¢ a gallon
Minimum Allowable Net Back:	8.42¢ a gallon



Associated Oil Company have a lease on this site presently owned by Chitwood and Study which expires on September 10, 1946 and will be terminated on that date. If allocations are still in effect at that time and Company is unable to supply products to them, Associated is obligated to do so under P.A.W. ruling.

Chitwood and Study are the Goodyear distributors for San Pedro and are considered one of the largest Goodyear distributors in the entire harbor area.

This proposal admirably fits Long Beach's Representation Objective and will provide representation where it is sorely needed. Company enjoys only 7.4% of the total available business in San Pedro.

May we have your approval?

E. D. THOMPSON

EDT
Hall

Option to purchaser 90 day expires 1/15/45

ECONOMIC ANALYSIS RETAIL GASOLINE OUTLET

(To be used for all 3-party deals and those 2-party deals beyond Dist. Mgrs. authority)

District LL Branch _____ Served from _____ bulk plant or by _____

PROPOSAL Loan $22,500 - Lease site. DATE 1-8-45

construct post war service station - Chitwood Study - Goodyear Dist. for San Pedro Calif. 2-party ✓ 3-party ☐

Location N.E. Cor. 11th St. & So. Pacific Ave Dimensions-each Street Parcel #1 50'x150' #2 75 x 150' see attached plan.

GENERAL SITUATION

Type of proposed account Gasoline Car service station

Est. normal mo. gaso. sales 12,500 gals. of which approx. 100 % will be new business to Co.

Nearest stations handling Standard products serving same trade:

Sta. No. (or name) SSINC 270	Sta. No. (or name) 7331L	Sta. No. (or name)
Distance 6 Bl. north	Distance 4 Bl. South	Distance
Lease Exp. Date	Lease Exp. Date	Lease Exp. Date
Cancellation	Cancellation	Cancellation
Options	Options	Options
Norm. Mo. gaso. vol.	Norm. mo. gaso. vol.	Norm. mo. gaso. vol.

Competitive price situation in neighborhood Dangerous, many independents selling at lower than Co. set prices

Possible highway changes Plans being made to divert U.S. 101 Alt. from Central - advantageous to Station

Avail. resale in locality 5,565,000 gal/yr. S.O.Co. resale 411,810 gal/yr. S.O.Co.% of total 7.4 %

Brand prev. handled Rose City Fuels #2 Ave. Mo. Sales last ~~normal~~ 12 Mo. period 777 gals. 44

Requested lease of Pure Oil Co. Normal 9125 51

TERMS OF PROPOSAL

INVESTMENT PROPOSED: Post War

Cost of facil. to be purchased $ —

Cost of new facil. to be installed $ 13,922

Total facilities investment $ 13,922

Facilities invest per monthly gal. $ 1.11

If Real Property to be purchased

Real Property Purchase Price $ —

Appraisals $ Parcel #1 - $20,000 $ #2 28,673 (Value indicated financial statement)

Property taxes $ _____ per. yr.

Lease Terms 10 years - 5 year option - 30 day cancellation. Company obligated to construct station.

Initial period	10 yrs. rent @ $ 100	per mo.	.8 ¢ per gal.	No. Years Co. obligated pay rent	1 yrs.
Option period	5 yrs. rent @ $ 100	per mo.	.8 ¢ per gal.	Consider Co. cancellation &	
Option period	yrs. rent @ $	per mo.	¢ per gal.	Expiration Date	
Total period	yrs. Ave. rent $	per mo.	¢ per gal.		
Less concess. rent or other income	$	per mo.	¢ per gal.	Longest period including options Co. may occupy without lessor cancellation	15 yrs.
Net Rent	$ 100	per mo.	.8 ¢ per gal. (a)		

Cancellation clauses - Company _____

- Lessor _____

1st Deed of Trust parcel #1 - Value $20,000
2d " " " #2 " $28,673

Advance rentals ☐ or loans ✓ Amount $ 22,500 Type of security _____ Value $ _____

Basis of repayment Loan - $100 mo. Till sta. constr. thereaf. 120 equal mo. pmts. Interest received 2½ %

OPERATION: Dealer Agreement 15 yrs.

Sub lease 10 yrs option - 5 yr automatic.

Return from Dealer 100 mo Till sta. constr then 150 mo. for 10 yrs. 1.2 ¢ per gal. (b)

DEPRECIATION OR AMORTIZATION: Total facil. invest. $ 13,922 ÷ 120 mos = $ 116.02 /mo. = .93 ¢ per gal. (c)

NETBACK CALCULATION

Normal dealer price for Standard gasoline . . . . . 14.00 ¢ per gal.

LESS: State and Federal taxes . . . . . 4.5 ¢/gal.

Freight from normal supply point plus terminal expense . . . . . .198 ¢/gal.

Whole. Distr. commission in excess of 1¢ per gallon . . . . . — ¢/gal.

Depreciation or amortization .93 ¢ per gal. (c. above)

Rent paid or purchase carrying charge .8 ¢ per gal. (a. above)

Total 1.73 ¢ per gal.

Rent received from Dealer 1.20 ¢ per gal. (b. above)

Absorption .53 ¢ per gal. → .53 ¢/gal.

Special deduction or addition _____ ¢/gal.

Total Deductions 5.228 ¢ per gal.

Net Back 8.772 ¢ per gal.

H.O. use

Minimum Allowable 8.42 ¢ per gal.

Special condition, interim rent, etc. Company to secure 2d trust ded on parcel #2 on which lessor now has 1st Mortgage with bal. $11,741.66. Loan to amount $2500 on parcel #1 Company loan of $22,500 to making bal of loan secured $25000. (one)

Prepared by _____
Gen'l. Rep., Br. Mgr. Dev. Spec. Date

Approved by _____
District Manager Date

REVIEWED BY ORG. PLAN. DIV.

Transmit original to Reg. Asst. Mgr., Dev. Div. with 2 copies of supplement, Executed Agmts., Photographs, Map, Cost Estimate & Sketch and Construction Data Sheet.

(Cycled to Pan. Pacific.)

Approved ☐
Recommended ✓ _____ 1-10-45
Asst. Dist. Development Div. Date

APPROPRIATIONS COMMITTEE

Other Approvals _____ J.M. Evans 1/10/45
Date

_____
Date

(1407)

2361

Company to agree to release T. Deed on parcel #2 when lessors equity in parcel #1 is $7,500

GOVERNMENT EXHIBIT NO. 21-A

L-608

LEASE

Dated January 19, 1945

1. DEAN B. CHITWOOD and BELLE CHITWOOD, his wife, and W. KENNETH STUDY and ELSIE C. STUDY, his wife, Lessor,

hereby leases to STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Lessee, for the term commencing on the 1st day of March, 1945, and ending as provided in paragraph "16" hereof ~~on the 28th day of February, 1955~~, in. W.H.W. E.C.S. the following described premises in the City of Los Angeles, County of Los Angeles, State of California;

PARCEL 1: The South 50 feet of the West 30 feet of Lot 21, and the South 50 feet of Lots 22, 23, and 24 of Hill and Jourdan's Subdivision of Block 11, San Pedro, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 59 Page 21 of Miscellaneous Records in the office of the County Recorder of said County.

W.H.W. D.B.C. W.H. B.C. E.C.S.

This lease and option to purchase is made subject to a deed of trust dated January 20, 1945 executed by the lessors herein as trustors to secure their note for $22,500.00 in favor of Standard Oil Company of California, to be recorded concurrently herewith."

RECORD

P.1400-1411

3. Lessee shall have the right during Lessee's occupancy of the leased premises to rearrange or remodel any improvements, fixtures, or equipment on the leased premises; to construct and maintain on the leased premises such other buildings, structures, improvements, or equipment as Lessee may desire; and to remove the same or any part thereof at will; and to cut curbs, construct roadways, and use sidewalks for vehicles to pass to and from the leased premises. Upon the expiration of this lease, or any extension or renewal thereof, Lessee agrees to replace any or all curbs and sidewalks cut or removed by Lessee during Lessee's occupancy of the premises. In the event it is or becomes unlawful for Lessee to erect, operate, or maintain on the leased premises, or any part thereof, a service station, or any facilities necessary or convenient to the conduct of the same; or to make alterations or improvements necessary, in the opinion of Lessee, for the operation of said service station, or to store thereon or to sell therefrom any gasoline or other petroleum product or other goods marketed generally by Lessee from time to time; or if it shall be or become unlawful to construct or maintain approaches to said service station by reason of any statute, ordinance, or other regulation; or if any part of the leased premises is condemned for public or quasi-public purposes, or if there is a highway or street change in the vicinity of the leased premises, so that in the opinion of Lessee it shall become impracticable or unprofitable to construct, maintain, or operate said service station on the leased premises, then Lessee may terminate this lease by giving Lessor ten (10) days' notice in writing of such termination. If, as a result of causes other than those hereinabove set out, such as earthquake, fire, flood, strikes, riots, insurrection, or other similar or different causes beyond the control of Lessee, the leased premises shall become unusable, from a practical standpoint, for service station purposes for a period of thirty (30) consecutive days or longer, then Lessee may, effective on the day of the happening of any such event, suspend all rental payments hereunder until the leased premises are again so usable.

4. Lessee shall have the right at any time during Lessee's occupancy of the leased premises, or within a reasonable time thereafter, to remove any and all buildings, improvements, fixtures and equipment, placed by it, or by its predecessor in interest, in, under, or upon the leased premises, or acquired by Lessee whether before or during the term hereof, but Lessee shall not be obliged to do so.

5. Lessee shall pay all taxes levied or assessed during the term of this lease on any facilities located on the leased premises while the same are owned by Lessee. All other real or personal property taxes or assessments, including all street improvements or other special taxes or assessments, shall be paid by Lessor.

6. Lessee, while in possession, shall have the prior right to buy the whole or any part of the leased premises or any larger parcel of which the leased premises are a part. If Lessor receives from a third party an acceptable bona fide offer to buy such property, Lessor shall forthwith give Lessee written notice of such offer. Lessee shall have thirty (30) days from the receipt of such notice to buy such property at the terms of such offer relating to such property, or at such lesser terms as Lessor and Lessee may agree upon. If Lessee fails to exercise this option and Lessor sells such property to a third person, such sale shall be made subject to this lease.

7. If Lessee shall hold over after the expiration of the term of this lease, or any extension thereof, such tenancy shall be from month to month only and upon all the terms, covenants, and conditions hereof.

8. Lessee may extend this lease for a further period of five years by giving Lessor notice in writing of its intention so to do at any time prior to the expiration of the term hereof.

12. All rentals payable hereunder shall be paid to DEAN B. CHITWOOD and W. KENNETH STUDY

unless and until Lessor designates some other party to receive rentals.

Written notices to Lessor hereunder shall be addressed to Lessor at 1024 South Pacific Avenue,

San Pedro, California

13. Written notices to Lessee hereunder shall be given to Lessee at 533 Jergins Trust Building,

Long Beach 2, California. All notices shall be deposited in the United States Post Office, properly addressed as aforesaid, postage fully prepaid, for delivery by registered mail.

14. Execution of this lease by Lessor constitutes an offer which shall not be deemed accepted by Lessee until Lessee has executed this lease and delivered a duplicate original thereof to Lessor.

15. This lease shall bind and inure to the benefit of the successors and assigns of Lessee, and shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of Lessor.

16. The term of this Lease shall be for TEN (10) years, commencing on the first day of March, 1945, and ending on the 28th day of February, 1955; it being expressly understood, however, anything to the contrary herein notwithstanding, said TEN (10) year term shall be extended for such a period of time as shall elapse between March 1, 1945, and the date of the completion of construction ~~by Lessee~~ of a Service Station upon said premises ~~and the commencement of delivery of Lessee's products thereto.~~

16-a. Lessee shall have the option to purchase the demised premises for the sum of TWENTY FIVE THOUSAND AND NO/100 DOLLARS ($25,000.00) at any time prior to (a) September 11, 1946, or (b) until any and all Governmental regulations restricting construction of Service Stations are removed and materials are available, whichever is latest. The option shall be exercised by Lessee giving written notice to Lessor at any time prior to said date, of ~~Lessee~~'s intention to purchase the demised premises and thereupon, and within TEN days after the posting of such notice, unless it shall be agreed otherwise, shall deposit the purchase price in escrow with a title company or bank in the locality.

16-a. Lessee or its nominee shall have the option to purchase the demised premises for the sum of TWENTY FIVE THOUSAND AND NO/100 DOLLARS ($25,000.00) at any time prior to (a) September 11, 1946, or (b) until any and all Governmental regulations restricting construction of Service Stations are removed and materials are available, whichever is latest. The option shall be exercised by Lessee or its nominee giving written notice to Lessor at any time prior to said date, of intention to purchase the demised premises and thereupon, and within TEN days after the posting of such notice, unless it shall be agreed otherwise, shall deposit the purchase price in escrow with a title company or bank in the locality, with instructions to notify Lessor that such deposit has been made, and Lessor shall within said TEN days place in escrow with said title company or bank, in a form acceptable to Lessee or its nominee, a Deed conveying unto Lessee or its nominee a marketable title to the demised premises. If for any reason Lessor shall fail to deposit such Deed with the title company or bank, or shall be unable to convey to Lessee or its nominee a marketable title to the demised premises, then Lessee or its nominee shall have the right to reclaim the deposit made to the title company or bank or shall have the option to demand specific performance of Lessor's agreement to convey, in which event the deposit shall be, and be construed to be, a full tender of performance by Lessee or its nominee and avail itself of such other legal or equitable remedy as the law may provide. Otherwise upon completion of the sale, this Lease and any and all Subleases or Dealer Agreements relating to said property, shall cease and determine and thereafter the Parties shall be released from any and all obligation hereunder or thereunder.

~~602~~

17. Anything herein to the contrary notwithstanding, it is the intent that Lessee shall have the option to construct a service station on the demised premises if and when materials are available and existing governmental regulations prohibiting such construction are removed and it is not the intent that Lessee shall be obligated so to do.

600

IN WITNESS WHEREOF, these presents are hereby signed in triplicate by the parties hereto.

Dean B. Chitwood — Lessor

Belle Chitwood

Belle Chitwood

W. Kenneth Study

W. Kenneth Study — Lessor

Elsie C. Study

Elsie C. Study

STANDARD OIL COMPANY OF CALIFORNIA, Lessee

By W. J. Watson
Attorney in fact.

Prepared By
Attorney's Approval
Tillsbury, Madison & Sutro - By
Other Attorney's
Form Previously Approved By

Description-Approved
R. of W. Approval
Dr. Dy. Approval
Dir. Spec. Approval
Dist. Sales Mgr. Approval R. [illegible]
Approval For Execution E. [illegible]

Lease

S-480
(Vacant site)
(8-44)

2365

2. Lessee agrees to pay Lessor rental for the use and occupancy of the leased premises as follows:

In advance on the first day of each and every month during the term hereof the sum of ONE HUNDRED AND NO/100 DOLLARS ($100.00).

provided, however, that no rentals shall be due and payable hereunder until the date on which the leased premises are delivered to Lessee free and clear of all improvements except such as may be covered by this lease or belong to Lessee. Lessee shall have the right to set off against the rental payable hereunder any rentals owing Lessee by Lessor under the terms of any other agreement in effect between Lessee and Lessor.

8361

MICROCARD
TRADE MARK ®

MATTHEW BENDER & COMPANY
MB

48

9. Every provision hereof imposing an obligation on Lessor is a material inducement and consideration for the execution of this lease by Lessee, and any breach, violation, or failure with respect thereto by Lessor shall entitle Lessee to terminate this lease forthwith by giving Lessor written notice of such termination, and no waiver by Lessee of any such breach, violation, or failure, shall waive any continuing, subsequent, or other breach, violation, or failure.

10. If any tax or charge is hereafter imposed upon Lessee, pursuant to any so-called Chain Store Tax Law hereinafter enacted by any governmental authority, for or on account of the operation of its service station on the leased premises, Lessee may terminate this lease at any time on ninety (90) days' notice to Lessor served after the enactment of such law.

11. Lessee shall have the right to terminate this lease at any time during the term hereof, or any extension thereof, upon giving Lessor thirty (30) days' written notice of intention so to do.

(1410)

1410

GOVERNMENT EXHIBIT NO. 21-B

LEASE AND OPTION TO PURCHASE

THIS INDENTURE, dated the 19th day of January, 1945, by and between DEAN B. CHITWOOD and BELLE CHITWOOD, his wife, and W. KENNETH STUDY and ELSIE C. STUDY, his wife

of 1024 South Pacific Street, San Pedro, California

hereinafter called "Lessor", and STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Lessee",

WITNESSETH:

That for the term and upon the terms and conditions set forth in that certain written lease agreement and option to purchase bearing date January 19, 1945, from Lessor to Lessee, all of which terms and conditions are hereby made a part hereof, as fully and completely as if herein specifically set out in full, Lessor has leased, demised and let, and does hereby lease, demise and let unto Lessee and give unto Lessee an option to purchase the following described real property, situate, lying and being in the City of Los Angeles, County of Los Angeles, State of California, more particularly described as follows, to-wit:

PARCEL 1: The South 50 feet of the West 30 feet of Lot 21, and the South 50 feet of Lots 22, 23, and 24 of Hill and Jourdan's Subdivision of Block 11, San Pedro, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 59 Page 21 of Miscellaneous Records in the office of the County Recorder of said County.

This lease and option to purchase is made subject to a deed of trust dated January 20, 1945 executed by the lessors herein as trustors to secure their note for $2,500.00 in favor of Standard Oil Company of California, to be recorded concurrently herewith.

(1411)

IN WITNESS WHEREOF, the parties hereto have executed this instrument.

Dean B. Chitwood
Dean B. Chitwood

Belle Chitwood
Belle Chitwood

W. Kenneth Study
W. Kenneth Study

Elsie C. Study
Elsie C. Study

STANDARD OIL COMPANY OF CALIFORNIA

By [illegible]

Description-Approved
Dept. of W. Approval
Dept. Atty. Approval

(1412)

2366

GOVERNMENT EXHIBIT NO. 21-C

SUBLEASE

Dated January 19, 1945.

1. STANDARD OIL COMPANY OF CALIFORNIA, a corporation, "Lessor" leases to DEAN B. CHITWOOD and BELLE CHITWOOD, his wife, and W. KENNETH STUDY and ELSIE C. STUDY, "Lessee", for the term commencing the 1st day of March, 1945, ~~and ending the 28th day of February, 1955~~ as provided in paragraph "6" herein, the following described premises in the City of Los Angeles, County of Los Angeles, State of California:

PARCEL 1: The South 50 feet of the West 30 feet of Lot 21, and the South 50 feet of Lots 22, 23, and 24 of Hill and Jourdan's Subdivision of Block 11, San Pedro, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 59 Page 21 of Miscellaneous Records in the office of the County Recorder of said County.

together with improvements and fixtures located thereon.

2. This sublease is subject to all the terms and conditions of the lease dated the 19th day of January, 1945, from DEAN B. CHITWOOD and BELLE CHITWOOD, his wife, and W. KENNETH STUDY and ELSIE C. STUDY, his wife to STANDARD OIL COMPANY OF CALIFORNIA.

3. Lessee agrees to pay to Lessor as rental for the use and occupancy of the leased premises as follows:

Lessee agrees to pay to Lessor as rental for the use and occupancy of the leased premises, as follows: (A) for a period commencing March 1, 1945, and continuing until the Lessor shall have completed the construction of a service station on said premises and commenced the delivery of Lessor's products thereto, the payment of ONE HUNDRED AND NO/100 DOLLARS ($100.00) per month, payable in advance on the first day of each and every calendar month during said term; and thereafter, (B) in advance on the first day of each and every calendar month during said term as provided under paragraph "8" herein, the payment of ONE HUNDRED AND NO/100 DOLLARS ($100.00), plus a sum equal to 36/100 of 1% of Lessor's cost of said service station and the installation thereof.

If any rental shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for Lessor to re-enter the leased premises and remove all persons therefrom, and Lessee agrees to quit and deliver up the premises to the Lessor peaceably and quietly at the end of said term in as good order and condition as

4-a. Until September 10, 1946, or until such time as Lessor shall have elected to commence the construction of a service station upon said premises, whichever date is the latest, said premises may be used by Lessees for any lawful purpose, save and except the sale of competitive petroleum products or for ingress and egress to a gasoline service station on adjacent property.

8. The term of this Sublease shall be for TEN (10) years, less ONE (1) day, commencing on the first day of March, 1945; it being expressly understood, however, that said term shall be extended for such period of time as shall elapse between March 1, 1945, and the date of the completion of the construction ~~by Lessor~~ of a service station upon said premises ~~and the commencement of delivery of Lessor's products thereto.~~

607

Lessor has executed this sublease and delivered a duplicate original thereof to Lessee.

STANDARD OIL COMPANY OF CALIFORNIA, Lessor

By W. J. Watson
Attorney in fact.

Dunn B. Chitwood
Dunn B. Chitwood
Belle Chitwood
Belle Chitwood
E. Kenneth Study
E. Kenneth Study
Elsie C. Study
Elsie C. Study, Lessee

Prepared By
Attorney's Approval
Fillsbury, Madison & Sutro - By
Other Attorney's
Previously
By

Description-Approved
R. of W. Approval
Dr. Mgr. Approval
Dir. Spec. Approval
Dist. Sales Mgr. Approval
Approval For Execution

Sublease

(9-46)

2368

9. Anything herein to the contrary notwithstanding, it is the intent that Lessor shall have the option to construct a service station on the demised premises if and when materials are available and existing governmental regulations prohibiting such construction are removed and it is not the intent that Lessor shall be obligated so to do.

DEALER AGREEMENT

Dated January 19, 1945

1. STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Company," agrees to sell to DEAN B. CHITWOOD and W. KENNETH STUDY, hereinafter called "Dealer," and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at 11th and South Pacific Avenue, San Pedro, California, The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity.

2. Deliveries shall be made in Company's customary manner. The price Dealer shall pay Company for petroleum products hereunder shall be Company's posted price to its dealers generally at time and place of delivery hereunder for the particular product and type of delivery involved. Terms shall be net cash at time of delivery, except at Company's option.

3. The products covered by this agreement shall be sold by Dealer as the products of Company and only under Company's regular trade-marks or brands for such products and shall not be sold, or offered for sale, at prices lower than Company's authorized retail prices therefor at time and place of sale. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging the trade for gasoline or lubricating oil sold to Dealer hereunder, it is agreed that the design, size, and location of such signs shall be subject to Company's approval. Company shall be excused from making deliveries hereunder while prevented from or hindered in doing so in its customary manner due to causes beyond its control. Whenever such causes require that deliveries of any product hereunder be restricted, Company reserves the right to restrict deliveries of such product to Dealer proportionately with restrictions on deliveries of such products to other comparable dealers in Dealer's vicinity.

4. Dealer shall pay to Company for the use of Company's facilities on said premises, as follows:

concurrent with a Sublease dated January 19, 1945 between parties hereto.

5. This agreement shall be operative during the period ~~commencing~~ _____, 194 ~~and ending~~ _____, 19____, and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first 6 months of any contract year, or at the end of any such year, by giving to the other at least 30 days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination

of any lease which Company may have upon the premises covered by this agreement, or upon the termination of any sublease between Dealer and Company covering said premises.

6. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees to protect, defend, and hold harmless the Company against all claims for damage to property (including Dealer's property), or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

7. In the performance of this agreement Dealer is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his conduct in the performance of this agreement. Company reserves no right to exercise any control over any of Dealer's employees and all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

8. Any tax, or the amount thereof, now or hereafter imposed, levied, or assessed by any governmental authority upon, measured by, incident to, or as a result of the transaction herein provided for, or the transportation, production, or manufacture of the goods, the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for.

9. This agreement shall not be assignable without the prior written consent of the Company. The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default or the waiver of the default of any other provision hereof. This agreement shall, as of the commencement date hereof, terminate all prior Dealer Agreements and Agency Agreements between Dealer and Company respecting the premises covered by this agreement.

10. Company shall have the right at any time to remove from said premises any equipment or improvements placed thereunder or thereon which are now or hereafter owned by Company.

11. Execution of this agreement by Dealer constitutes an offer which shall not be deemed accepted by Company until Company has executed this agreement and delivered a duplicate original to the Dealer.

Dean B. Chitwood
Dean B. Chitwood

W. Kenneth Study
W. Kenneth Study, Dealer

STANDARD OIL COMPANY OF CALIFORNIA, Company

By W. J. Watson
Attorney in fact.

Prepared By _____
Attorney's Approval
Pillsbury, Madison
& Sutro - By _____
Other Attorney's
or
Form Previously
Approved By FJS MM.

Description Approved _____
R. of W. Approval _____
Rs. Mgr. Approval _____
Dir. Spec. Approval J B Brumfit
Dist. Sales Mgr. Approval R. McLAUGHLIN
Approval For Execution AL

Dealer Agreement.
For Use in California, Oregon, Washington, Nevada, and Arizona.

B-452 (2-44)

2370

PREVENTION OF PERFORMANCE

In the event Company is prevented from or hindered in making deliveries hereunderin its customary manner due to fire, riot, labor disturbances, earthquakes, war, acts of any government (whether foreign or domestic, federal, state, county, or municipal), accident, total or partial failure of transportation or delivery facilities or supplies, shortage of products deliverable under this contract due to a shortage in the supply of crude oil or natural gas produced in the State of California, or any cause beyond its control whether similar to the foregoing causes or not, the obligation of Company to make deliveries during the period of such disability shall be suspended. Distributor's attention is called to the fact that as of the date of this contract, there is a shortage of gasoline and other petroleum products on the Pacific Coast due to the needs of the Armed Forces and the war effort. Therefore, Company will not be able to, nor shall it be obligated to deliver all of the gasoline or other products required by Distributor as specified in the paragraph of this contract designated as "Quantity" during the period of such shortage. It is Company's intention to prorate its available supply of product equitably among its purchasers (contract or otherwise) during this and other periods of product shortage or whenever due to any of the other causes enumerated above Company is unable to make deliveries to all such purchasers. However, Company shall in no way be obligated to thus prorate its available supply and its failure, partial or otherwise, to make deliveries to Distributor shall not be a breach of this contract, notwithstanding that Company is making deliveries to others. Upon termination of the cause or causes for suspension of deliveries, performance hereunder shall be resumed, but nothing herein shall be construed as extending the term of this contract.

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Vol. III

TRANSCRIPT OF RECORD

(Pages 1417 to 1947)

Supreme Court of the United States

OCTOBER TERM, 1948

No. 279

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FILED SEPTEMBER 16, 1948.

SUPREME COURT OF THE UNITED STATES

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STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

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[fol. 2371] GOVERNMENT EXHIBIT No. 21–E

SS-7478-L. San Pedro

San Pedro, California, March 2, 1946.

Standard Oil Company of California, 533 Jergins Trust Building, Long Beach 2, California.

GENTLEMEN:

Reference is hereby made to that certain Lease, Sublease, and Dealer Agreement, all dated January 19, 1945, as operative between us covering the use and occupancy of the premises located at Eleventh and South Pacific Avenue, San Pedro, California, more particularly described as follows:

"Parcel 1: The South 50 feet of the West 30 feet of Lot 21, and the South 50 feet of Lots 22, 23, and 24 of Hill and Jourdan's Subdivision of Block 11, San Pedro, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 59, Page 21 of Miscellaneous Records in the office of the County Recorder of said County."

We hereby agree not to store, handle, distribute, sell or advertise for sale, on premises owned, or leased by us, adjoining the demised premises, any petroleum product or products in competition with those marketed by you, nor to suffer or permit, by lease, license, or other agreement, any person, persons, firm, or corporation, to store, handle, distribute, sell or advertise for sale on said adjoining premises, any petroleum product or products in competition with those marketed by you.

Yours truly, Dean B. Chitwood, Belle Chitwood, W. Kenneth Study, Elsie C. Study.

J. A. S.

[fol. 2372] GOVERNMENT EXHIBIT No. 21–F

Note Secured by Deed of Trust

$22,500.00. San Pedro, California, January 15, 1945.

In installments as herein stated for value received, we promise to pay to Standard Oil Company of California, a

corporation, or order at 605 W. Olympic, Los Angeles, California, the sum of Twenty-two Thousand Five Hundred and no 100 Dollars, with interest from date on unpaid principal at the rate of 2½ per cent per annum, principal and interest payable in installments of One Hundred and no 100 Dollars ($100.00), or more on the first day of each month beginning on the 1st day of March, 1945, and continuing until such time as a Service Station is constructed upon the premises described in the Deed of Trust given to secure this Note; but in any event the balance of principal and interest due hereunder shall all become due and payable on or before March 1, 1960; if prior thereto the construction of a Service Station is completed thereon, the then remaining principal and unpaid interest shall be payable in One Hundred Twenty (120) equal monthly installments from the date construction is completed to include interest at 2½ per cent per annum.

Each payment hereunder shall be credited first on interest then due and the remainder on principal, and interest shall thereupon cease upon the principal so credited. Should default be made on the payment of any installment when due the whole sum of principal and interest shall become immediately due at the option of the holder of this Note, Principal and interest payable in lawful money of the United States. If action be instituted on this note we promise to pay such sum, in addition to all sums herein provided to be paid, as the Court may fix as attorney's fees. This Note is secured by Deed of Trust to Security-First National Bank of Los Angeles, a National Banking Association.

(S.) Dean B. Chitwood, Belle Chitwood, W. Kenneth Study, Elsie C. Study.

GOVERNMENT EXHIBIT NO. 21-G

3782 10-41° K.I.

Deed of Trust

With Assignment of Rents

THIS DEED OF TRUST, made this 20th day of January 45

BETWEEN DEAN B. CHITWOOD and BELLE CHITWOOD, husband and wife, and W. KENNETH STUDY and ELSIE STUDY, husband and wife, herein called TRUSTOR,

whose address is (Street and number) (City) (State)

Security-First National Bank of Los Angeles
a National Banking Association,

herein called Trustee, and STANDARD OIL COMPANY OF CALIFORNIA, a corporation,

herein called BENEFICIARY,

WITNESSETH: That Trustor irrevocably GRANTS, TRANSFERS and ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in Los Angeles County, California, described as:

The South 50 feet of the West 30 feet of Lot 21, and the South 50 feet of Lots 22, 23, and 24 of Hill and Jourdan's Subdivision of Block 11, San Pedro, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 59 Page 21 of Miscellaneous Records in the office of the County Recorder of said County.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT HOWEVER to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

2373

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GOVERNMENT EXHIBIT NO. 22-E

7450

FOR VALUE RECEIVED, I (or we) hereby transfer, sell and assign to W. S. Darnell, Lucille J. Darnell, H. A. Holyfield, Helen M. Holyfield.

effective as of October 15, 1946, all my (or our) right, title and interest in and to

that certain Lease dated ....., 19....,

that certain Sublease dated 4/15, 1946,

that certain Dealer Agreement dated 4/15, 1946,

that certain Distributor Agreement dated 9/18, 1946 (Letter),

that certain Petroleum Products and Equipment Agreement dated ....., 19....,

that certain Conditional Sale Contract dated ....., 19....

as now operative between the undersigned and STANDARD OIL COMPANY OF CALIFORNIA, referring to the same premises, namely, that certain real property located at U. S. 99 (Street or R. F. D.) in the City of Redding, State of California, more particularly described in said lease.

The agreements hereby assigned shall automatically revert to and be binding upon the undersigned if at any time during the life thereof the undersigned should again come into possession of said real property.

W. S. Darnell

Lucille J. Darnell

The above assignment is consented to; provided, however, that no further assignment be made without our consent.

STANDARD OIL COMPANY OF CALIFORNIA

By O. B. Hayes
ASSISTANT DISTRICT MANAGER

I (or we) hereby assume and agree to be bound by the above assignment and to perform all of the terms, provisions, covenants, and conditions of the contractual obligations therein assigned.

W. S. Darnell

Lucille J. Darnell

H. A. Holyfield

Helen M. Holyfield

In consideration of $1.00 and for other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned owner of the premises referred to above hereby consents to the foregoing assignment.

.....

.....

PREPARED BY .....

ATTORNEY'S APPROVAL
PILLSBURY, MADISON & SUTRO BY .....
OTHER ATTORNEYS
-OR-
FORM PREVIOUSLY APPROVED BY .....

DESCRIPTION APPROVED .....
R. OF W. APPROVAL .....
BR. MGR. APPROVAL .....
DEV. SPEC. APPROVAL .....
DIST. MGR. APPROVAL .....
APPROVAL FOR EXECUTION

Assignment—Lease, Sublease, Dealer Agreement, Distributor Agreement, Petroleum Products and Equipment Agreement and Conditional Sale Contract

829

1182

2381

$ _____ California, _____ 19____

In installments as herein stated, for value received, I promise to pay to _____

_____

_____

or order, at _____

the sum of _____ DOLLARS,

with interest from _____ on unpaid principal at the rate of _____ per cent per annum, payable _____; principal payable in installments of _____ Dollars or more on the _____ day of each _____ month, beginning on the _____ day of _____, 19____

_____

_____

and continuing until said principal and interest have been paid.

Should interest not be so paid it shall thereafter bear like interest as the principal. Should default be made in payment of any installment of principal or interest when due the whole sum of principal and interest shall become immediately due at the option of the holder of this note. Principal and interest payable in lawful money of the United States. If action be instituted on this note I promise to pay such sum as the Court may fix as attorney's fees. This note is secured by DEED OF TRUST to SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a National Banking Association.

_____

_____

A. To protect the security of this Deed of Trust, Trustor agrees:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2. To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum in any such action or proceeding in which Beneficiary or Trustee may appear.

4. To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all incumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any incumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at _____

B. It is mutually agreed that:

1. Any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums secured or to declare default for failure so to pay.

3. At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5. As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as then may be required by law following the recordation of said notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels and in such order as it may determine (but subject to statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at seven per cent per annum; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7. Trustee's fees for its ordinary duties hereunder shall be: (a) For sale of property, exclusive of posting, advertising and other costs and expenses, a fee, hereby agreed to be reasonable, computed on the unpaid balance of all sums secured hereby at the following rates: on the first $1000.00 or part thereof, 6%%, with a minimum of $50.00; on the next $7000.00, 2%; on the next $42,000.00, 1½%; on the next $50,000.00, ¾ of 1%; and on all above $100,000.00, ½ of 1%; upon sale proceedings discontinued before sale, a reasonable fee, depending upon services performed. (b) For partial or full reconveyance, a reasonable fee, with a minimum of $3.50 and $2.50 respectively.

8. Trustor, or if said property shall have been transferred, the then record owner, together with Beneficiary, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by each and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers, and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded, and the name and address of the new Trustee. If notice of default shall have been recorded, this power of substitution cannot be exercised until after the costs, fees and expenses of the then acting Trustee shall have been paid to such Trustee, who shall endorse receipt thereof upon such instrument of substitution. The procedure herein provided for substitution of Trustees shall be exclusive of all other provisions for substitution, statutory or otherwise.

9. This Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

10. Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee

indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as then may be required by law following the recordation of said notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels and in such order as it may determine (but subject to statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at seven per cent per annum; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7. Trustee's fees for its ordinary duties hereunder shall be: (a) For sale of property, exclusive of posting, advertising and other costs and expenses, a fee, hereby agreed to be reasonable, computed on the unpaid balance of all sums secured hereby at the following rates: on the first $1000.00 or part thereof, 6%%, with a minimum of $50.00; on the next $7000.00, 2%; on the next $42,000.00, 1½%; on the next $50,000.00, ¾ of 1%; and on all above $100,000.00, ½ of 1%; upon sale proceedings discontinued before sale, a reasonable fee, depending upon services performed. (b) For partial or full reconveyance, a reasonable fee, with a minimum of $3.50 and $2.50 respectively.

8. Trustor, or if said property shall have been transferred, the then record owner, together with Beneficiary, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by each and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers, and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded, and the name and address of the new Trustee. If notice of default shall have been recorded, this power of substitution cannot be exercised until after the costs, fees and expenses of the then acting Trustee shall have been paid to such Trustee, who shall endorse receipt thereof upon such instrument of substitution. The procedure herein provided for substitution of Trustees shall be exclusive of all other provisions for substitution, statutory or otherwise.

9. This Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

10. Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee

C. The Undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

Street and Number	City	State	Signature of Trustor
1024 Pacific Ave.	San Pedro	Calif.	Dean B. Chitwood
1024 Pacific Ave.	San Pedro	Calif.	Belle Chitwood
357 So. Meyler	San Pedro	Calif.	W. Kenneth Study
357 So. Meyler	San Pedro	Calif.	Elsie C. Study

STATE OF CALIFORNIA, }
COUNTY OF Los Angeles } ss.

On this 20th day of January, 19 45

before me, H. D. Grove, a Notary Public in and for said County, personally appeared Dean B. Chitwood, Belle Chitwood, W. Kenneth Study & Elsie C. Study

known to me to be the person s whose name s are subscribed to the within instrument, and acknowledged that they executed the same.

WITNESS my hand and official seal.

(Notarial Seal)

H. D. Grove
Notary Public in and for said County and State.

If executed by a Corporation the Corporation Form of Acknowledgment must be used.

(Copyist will Copy) Indexed as Trust Deed and Assignment of Rents.

(1418 B)

2374

Mar. 24, 1945 14180

Deed of Trust

Installment Note—INTEREST EXTRA

.....

.....

.....

TO

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

AS TRUSTEE FOR

.....

.....

.....

.....

Dated..... ....., 19.....

These forms may be obtained without cost at any Branch of

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

3782 10-41* K.I.

Order No. [illegible]

Escrow No. [illegible]

2375

WHEN RECORDED PLEASE MAIL TO:

STANDARD OIL COMPANY OF CALIF.
Pergins Trust Bldg.
100 E. Ocean Blvd.

Long Beach 2, Calif.

RECORDED
Read by C. Smith
Document Shields

RECORDED AT REQUEST
TITLE INSURANCE & TRUST CO.
Mar. 24, 1945 at 8 A....
in Book 21790 Page 173
of Official Records,
County of Los Angeles, Calif.
Fee.... P... Folder....
FRANK E. BERRY, County Recorder
By..... Deputy Recorder

Reconveyances under this Deed of Trust must be obtained or proceedings instituted in event of default at one of the TRUST DEPARTMENTS of this Bank located at:

LOS ANGELES—Head Office,
Pacific Southwest Building,
215 West 6th Street.
LONG BEACH BRANCH—First St. and Pine Ave.
PASADENA BRANCH—Colorado and Marengo Sts.
FRESNO BRANCH—1058 Fulton St
SANTA BARBARA BRANCH—834 State St.

REQUEST FOR FULL RECONVEYANCE

Do not record. To be used only when note has been paid.

....., 19.....

To SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, Trustee:

The undersigned hereby certifies that he is the legal owner and holder of the note and all other indebtedness secured by the within Deed of Trust; that said note, together with all such other indebtedness has been fully paid and satisfied; and requests and directs you, on payment of any sums owing to you under the terms of said Deed of Trust, to cancel said note and all other evidences of indebtedness delivered to you herewith secured by said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you thereunder.

SIGNATURE GUARANTEED

.....

By.....
Authorized Signature

NOTICE: Above guaranty of signature to be executed by bank, trust company, or title company.

Mail Reconveyance to.....

[fol. 2385] GOVERNMENT EXHIBIT 23-E

STANDARD OIL COMPANY OF CALIFORNIA

San Francisco, California

November 15, 1941.

Ransome Company, San Luis Obispo, California.

GENTLEMEN:

Please refer to the Sublease Agreement between us dated November 15, 1941 covering premises at San Luis Obispo, California as more particularly described therein.

It is hereby mutually agreed that the terms and provisions of said agreement shall be and are hereby modified to provide that we shall pay you the sum of one cent (1¢) per ~~gallon for each~~ gallon of gasoline delivered by us to you at said premises. Such payment shall be made by us to you on or before the 15th day of each and every month during the term of said agreement on aggregate deliveries made by us during the preceding calendar month, and shall be credited against the rental payable by you to us under paragraph 3 of said agreement. During each month such gallonage payments exceed said monthly rental you shall be credited with such excess on or before the 15th day of the following month.

Please signify your agreement to the foregoing by signing in the space provided below.

Yours very truly, Standard Oil Company of California, by W. G. Watson, Attorney in fact.

Agreed to: Ransome Company, by Talbert H. Ransome, Vice-President.

[fol. 2386] GOVERNMENT EXHIBIT NO. 23-F

This sublease, dated the 15th day of November, 1941.

Witnesseth:

1. That Standard Oil Company of California, a corporation, does hereby lease unto Ransome Company, a corporation, for the term commencing on the 15th day of November, 1941, and ending on the 13th day of November, 1951, all that

[fol. 2376] Easement

The undersigned, Dean B. Chitwood and Belle Chitwood, his wife, and W. Kenneth Study and Elsie C. Study, his wife, sometimes hereinafter referred to as "Grantors," do hereby grant to Standard Oil Company of California, a Corporation, sometimes hereinafter referred to as "Grantee," an unobstructed easement and right of way over, along, and across the hereinafter described real property, for use by vehicles and pedestrians for ingress to and egress from the property to the South thereof, together with the right to pave and/or otherwise surface and maintain the property covered by said easement in connection with the use for such purposes, to wit:

The North 30 feet of the South 80 feet of Lot 24, and the North 30 feet of the South 80 feet of the West 10 feet of Lot 23, of Hill and Jourdan's Subdivision of Block 11, San Pedro, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 59, Page 21, of Miscellaneous Records in the Office of the County Recorder of said County. [O.K. E. C. S., W. K. S., D. B. C., B. C.]

To have and to hold unto Grantee until terminated as hereinafter provided, to wit:

That this easement and all rights of Grantee hereunder may be terminated by Grantors, by giving Grantee a thirty day written notice of election to terminate the same accompanied by a payment to Grantee as follows:

The parties hereto have heretofore executed a sublease dated January 19, 1945, for a term commencing March 1, 1945, covering the South 50 feet of the West 30 feet of Lot 21, and the South 50 feet of Lots 22, 23, and 24, of Hill and Jourdan's Subdivision of said Block 11, San Pedro, as per map in Book 59, Page 21, wherein, among other things, it is provided that after the completion of the construction of a service station on said premises, Lessees therein (Grantors [fol. 2377] herein) shall pay to Lessor therein (Grantee herein), on the first day of each and every calendar month during said term (in addition to other sums), a sum equal to "36/100ths of 1% of Lessor's cost of said service station and the installation thereof"; and in the event that at the time of giving notice of termination of easement as afore-

(Here follows 2 Photolithographs, side folios 2380, 2381)

certain parcel of land situated in San Luis Obispo Suburban Trate, County of San Luis Ibispo, State of California, described as follows, to-wit:

Lot 21 of the San Luis Obispo Suburban Tract, in the County of San Luis Obispo, State of California, according to the map thereof filed February 7, 1906 in the Office of the Recorder of Said County.

Together with improvements and fixtures located thereon.

2. This sublease is subject to all the terms and conditions of the lease dated the 15th day of August, 1941, from Sandercock Transfer Company, a Corporation, to Standard Oil Company of California, a Corporation.

3. Lessee agrees to pay to Lessor as rental for the use and occupancy of the demised premises the sum of Two Hundred Eighty-five Dollars ($285.00) on the 15th day of each and every calendar month during the term hereof, commencing November 15, 1941, provided, however, if Lessor extends the term of said lease, referred to under Paragraph 2 above, the terms and provisions of this lease shall be extended automatically for a further term of 5 years, less one day, and Lessee agrees to pay to Lessor as rental hereunder, the sum of One Hundred Dollars ($100.00) on the first day of each and every calendar month during such extended term, commencing November 15, 1951, and it is agreed that [fol. 2387] if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for Lessor to re-enter the demised premises and remove all persons therefrom, and Lessee agrees to quit and deliver up the premises to the Lessor peaceably and quietly at the end of said term in as good order and condition as the same are now or may be put into.

4. Lessee shall have the right during the term hereof, to occupy and use the demised premises for the sale and distribution of only such petroleum products as may be sold Lessee by Lessor, and Lessee agrees not to store, handle, sell, or distribute on or from said premises any petroleum products of any description other than that sold to Lessee by Lessor, except as otherwise authorized in writing by Lessor. Lessee agrees to operate his business continuously during the term of this lease and to do everything in his power to promote and facilitate the sale and vending of such products.

[fol. 2382] GOVERNMENT EXHIBIT 22-I

STANDARD OIL COMPANY OF CALIFORNIA

San Francisco, California

September 18, 1946.

Mr. W. S. Darnell, Redding, California.

DEAR SIR:

Referring to our recent understanding in reference to that certain Dealer Agreement TBA dated April 15, 1946, by and between Standard Oil Company of California, a corporation, therein called "Company" and you, therein called "Dealer," we hereby amend that part of paragraph one which refers to price, to read as follows:

> "The price Dealer shall pay Company for petroleum products purchased by Dealer shall be Company's posted price for the same or similar products to its dealers generally in Dealer's vicinity at time and place of delivery, with the exception that the price Dealer shall pay Company for all grades of gasoline purchased by Dealer shall be one cent (1¢) less than the Company's posted price for gasoline to its dealers generally in Dealer's vicinity at time and place of delivery."

Please signify your acceptance of this modification by signing in the space indicated below.

Very truly yours, Standard Oil Company of California, by W. G. Watson, Attorney in Fact.

Approved. Date ——— ———, W. S. Darnell.

AWD, ICP, OBH, AMH.

[fol. 2383] GOVERNMENT EXHIBIT 23

STANDARD OIL COMPANY OF CALIFORNIA

Long Beach, California

September 22, 1947.

Competitive Lubricating Oils Chevron Truck Sations

WAF 8-14-47

Mr. W. A. Frazer, San Francisco.

For your information, neither The Pacific Coast Motor Freight or Acme Transportation Company have stopped at our Chevron truck stations to date. No doubt, in their hauls from San Francisco to Los Angeles, they are using Highway 99.

In respect to Union Oil Company's T5X oil, this competitive stock is being carried by our Ransome Truck Service, 7200-CDA, at San Luis Obispo purposely for the accounts of Western Truck Company, South Highway 101, San Jose, managed by A. D. Wolley & Sons, and operating nine large diesel and four butane trucks as well as other small equipment. The other account is Don Keith, Corcoran, California, who operates nine large diesel trucks. Any aid you may give us in having a member of the Lubricant's Division call on the above accounts will be greatly appreciated.

In addition to the above, our truck station 7277-CDA, Santa Maria, California, is carrying from one to two barrels of T5X for the express purpose of servicing a local trucking concern of Engel & Gray. Also our unit 7333-CDA, Ontario, California, carries a like amount for two local truck companies, namely; Dean Beck and John Corkindale. This matter will be handled by our local Fuel and Lubricating Engineer.

C. T. Furrer. CHG.

CHG/em.

cc—Mr. A. H. Kannady, Long Beach.

5. Lessee shall not sell or assign this sublease or any part thereof or any interest therein, or sublease or underlet the demised premises in whole or in part, or become associated with any other persons directly or indirectly, as partner or otherwise, in regard to Lessee's interest in, to, or under this sublease, without written consent of Lessor first had and obtained; any violation by Lessee of any of the foregoing provisions in this paragraph contained shall at the option of Lessor operate as a forfeiture of this sublease. Lessee shall not suffer any lien or encumbrance to be placed upon Lessee's leasehold interest of said premises or any part thereof, nor shall Lessee permit any one to occupy said premises or any part thereof in place and stead of Lessee, nor shall Lessee occupy the said premises or any part thereof as trustee of an express or implied trust for any person whatsoever; the breach by Lessee of any of the foregoing provisions and any assignment, whether voluntary or by operation of law, by any process or proceeding of any court, or by attachment, execution, proceedings in insolvency or bankruptcy, whether voluntary or involuntary, or receivership proceedings, shall constitute a breach of the covenant against the assignment of Lessee's rights hereunder and shall work a forfeiture of this sublease at the option of Lessor.

6. Lessor shall pay, when due, all taxes levied upon the improvements placed by Lessor upon the demised premises or acquired by Lessor before or during the term hereof; but Lessee shall upon demand reimburse Lessor for any taxes levied or assessed as the result of improvements owned by Lessee and located on said premises.

7. It is understood and agreed that Lessee in the performance of this agreement is engaged in an independent business and nothing herein contained shall be construed as reserving to Lessor any right to control Lessee with respect to his physical conduct in the performance of this agreement. It is further understood and agreed that Lessor reserves no right to exercise any control over any of Lessee's employees and that all employees of the Lessee shall be entirely under the control and direction of Lessee who shall be responsible for their actions and omissions. Lessee undertakes and agrees that he will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said

said, any balance of said "Lessor's cost of said service station and the installation thereof" shall be unpaid to Grantee herein, then as a condition to the termination of said easement Grantors shall pay to Grantee at the time of giving such notice of termination of easement, the entire unpaid balance of said "Lessor's cost of said service station and the installation thereof." In the event of such payment, then said Lessee's under said sublease shall no longer be obligated to make any further payments on account of said "Lessor's cost of said service station and the installation thereof."

In witness whereof, the parties hereto have hereunto set their hands this 13 day of May, 1946.

Dean B. Chitwood, Belle Chitwood, W. Kenneth Study, Elsie C. Study.

M. C. Simpson, A. W. D., M., J. H. L., E. M. H.

[fol. 2378] STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 13 day of May, 1946, before me, Ellen Crandell, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Dean B. Chitwood and Belle Chitwood, his wife, and W. Kenneth Study and Elsie C. Study, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

Ellen Crandell, Notary Public in and for said County and State.

GOVERNMENT EXHIBIT NO. 22-D

7450-CJA

City Redding, Calif.

Date March 11, 1948

MAR 30 AM

STANDARD OIL COMPANY OF CALIFORNIA
225 Bush Street
San Francisco, California

Gentlemen:

In consideration of the installation by you of certain additional facilities at the premises at U. S. Highway 99, in the City of REDDING, County of Shasta, State of California which I am leasing under that Sublease agreement with you dated July 15, 1947 I hereby agree to pay you for the use of said facilities, monthly in advance, commencing April 1, 1948, and ending September 30, 1957, the sum of Thirty-Six and 66/100 - - - Dollars ($ 36.66) in addition to the charge specified in said agreement for the use of the other facilities at said premises.

Very truly yours,

H. A. Holyfield

Helen M. Holyfield

William S. Darnell

Lucille J. Darnell

Increase Rental
Additional Facilities

3-467 (8-46)

2380

11284

[fol. 2384] GOVERNMENT EXHIBIT 23-D

STANDARD OIL COMPANY OF CALIFORNIA

San Francisco, California

June 28, 1943.

Ransome Company, 4030 Hollis Street, Emeryville, California.

DEAR SIRS:

Please refer to that certain Sublease between us dated November 15th, 1941, and more particularly to paragraph 3 thereof.

Subject to your indicating your consent thereto on a copy of this letter, this will evidence your agreement, as follows:

(1) Commencing January 1st, 1943, and ending December 31st, 1943, the amount required to be paid by you as rental under paragraph 3 of said Sublease shall be reduced to $135.00 per month.

(2) That in consideration of the foregoing modification, you agree that in the event of the exercise of the option to extend the term of said Sublease, as provided in paragraph 3 thereof, the rental during the first year of said extended term shall be $250.00 per month instead of $100.00 per month.

In all other respects said Sublease is hereby ratified and confirmed.

Yours very truly, Standard Oil Company of California, by W. G. Watson.

Accepted and Agreed this 2 day of August, 1943.

Ransome Company, by Talbert H. Ransome.

J.B.B., ESF, SAC, JBBurnett, C. E. McMillin, HAH.

[fol. 2379] GOVERNMENT EXHIBIT 22

San Francisco, California, September 4, 1947.

Competitive Oil—Chevron Truck Stations

Mr. W. H. Haines, Sacramento.

Please refer to our letter of August 8th on the above subject:

We would appreciate hearing from you as to the progress you have made in eliminating the competitive products at the Redding Truck Station, and any other information you have obtained on other truck stations in your District that may be stocking competitive oil.

W. A. Frazer, K.D.C.

KDC:CL.

state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Lessor with satisfactory evidence of the maintenance of such insurance. Lessee accepts exclusive liability for all contfibutions and payroll taxes required under the Federal Social Security Act and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

8. Lessee is to furnish and to install, wholly at expense of lessee, all facilities for the wholesale and retail distribution of Bu-Gas.

9. Lessee is to receive all revenue from subleasing by Lessee of restaurant and repair shop to be installed on said premises.

10. In the event that lessee does not market from marketing facilities on said premises a total of 120,000 gallons of gasoline, Standard Diesel Fuel, Standard Automotive Diesel Fuel, or more during any six months' period after the first six months from the date of commencement of said marketing from said premises, Lessor shall have the right to terminate this sublease and to re-enter the demised premises and remove all persons therefrom, and Lessee agrees to quit and deliver up the premises to the Lessor peaceably and quietly in as good order and condition as the same are now or may be put into. [T.H.R. 2/25/42]

11. In the event of termination of this sublease as provided in Paragraph 10 hereof Lessor shall have the option to purchase the Bu-Gas facilities referred to in Paragraph 8 hereof at the original cost therefor to Lessee less depreciation at the rate of 5% per year but in any event not less than One Thousand Dollars ($1,000). In the event Lessor elects not to exercise said option to purchase, Lessee shall have the right to remove said Bu-Gas facilities within a reasonable time after such termination of said sublease provided that the premises are placed in the same condition as they were prior to the installation of said facilities.

NOTE SECURED BY DEED OF TRUST

$22,500.00 San Pedro, California January 20, 1945.

In installments as herein stated for value received, we promise to pay to STANDARD OIL COMPANY OF CALIFORNIA, a corporation, or order at 605 W. Olympic, Los Angeles, California, the sum of Twenty-two Thousand Five Hundred and no/100 Dollars, with interest from date on unpaid principal at the rate of 2-1/2 per cent per annum, principal and interest payable in installments of One Hundred and no/100 Dollars ($100.00), or more on the first day of each month beginning on the 1st day of March, 1945, and continuing until such time as a Service Station is constructed upon the premises described in the Deed of Trust given to secure this Note; but in any event the balance of principal and interest due hereunder shall all become due and payable on or before March 1, 1960; if prior thereto the construction of a Service Station is completed thereon, the then remaining principal and unpaid interest shall be payable in One Hundred Twenty (120) equal monthly installments from the date construction is completed to include interest at 2-1/2 per cent per annum.

Each payment hereunder shall be credited first on interest then due and the remainder on principal, and interest shall thereupon cease upon the principal so credited. Should default be made on the payment of any installment when due the whole sum of principal and interest shall become immediately due at the option of the holder of this Note. Principal and interest payable in lawful money of the United States. If action be instituted on this note we promise to pay such sum, in addition to all sums herein provided to be paid, as the Court may fix as attorneys' fees. This Note is secured by DEED OF TRUST to SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a National Banking Association.

Dean B. Chitwood

W. Kenneth Study

Belle Chitwood

Elsie C. Study

In witness whereof, the parties have duly executed these presents in triplicate.

Standard Oil Company of California, Lessor, by W. G. Watson, Attorney in fact. Ransome Company, Lessee, Tallent H. Ransome, Vice President.

E.S.F.

[fol. 2388] GOVERNMENT EXHIBIT NO. 23-K

This lease, dated the 4th day of June, 1943,

Witnesseth:

1. That W. L. Kissinger and Zoe Kissinger, his wife, of the County of San Bernardino, State of California, Lessor, does hereby lease unto Standard Oil Company of California, a corporation, Lessee, for the term commencing on the 1st day of August, 1943, and ending on the 31st day of July, 1953, all that certain parcel of land situate in the City of Ontario, County of San Bernardino, State of California, described as follows, to-wit:

Lots 5, 6, 7, 8, in Block 50, Town of Ontario, as per plat recorded in Book 9 of Maps, page 43, records of San Bernardino County, together with all improvements and fixtures located thereon.

2. Lessee agrees to pay Lessor rental for the use and occupancy of the demised premises as follows:

"In advance on the 1st day of each and every calendar month during the term hereof, the sum of Two Hundred Dollars ($200.00)."

"In each year commencing August first and ending July thirty-first, during the term of this agreement, in which deliveries of gasoline by Lessee into storage facilities on the demised premises exceed 240,000 gallons, then Lessee agrees to pay Lessor on September first following the end of each such year, an additional rental in the sum of one cent (1¢) for each gallon so delivered in excess of 240,000 gallons during each such year. Lessee shall at Lessor's request, render Lessor such statement showing the amount of gallons so delivered during each such year as will permit Lessor to determine the basis of any payment made under this provision," provided, however, that no rentals shall be due and payable hereunder until the date on which pos-

session of the demised premises has been delivered over to Lessee.

[fol. 2389] GOVERNMENT EXHIBIT No. 23-N.

STANDARD OIL COMPANY OF CALIFORNIA

Long Beach 2, California, March 4, 1948.

Marketing Department, C. T. Furrer, District Manager

R. E. Donovan, W. B. Bilger, Assistant District Managers

J. L. Spaith, Assistant to the District Manager

Mr. Walter F. Hannah, 304 East "A" Street, Ontario, California.

DEAR MR. HANNAH:

Reference is made to the Dealer Agreement TBA between us of even date, covering the operation of the truck station located at 304 East "A" Street, Ontario, California.

It is hereby mutually agreed that the terms and provisions of said Agreement shall be and are hereby modified to provide that we shall pay you One Cent (1¢) per gallon for each gallon of gasoline delivered by us to you at said premises. Such payments shall be made by us to you on or before the 15th day of each and every month during the term of said Agreement on aggregate deliveries made by us during the preceding calendar month.

Please signify your agreement to the foregoing by signing the attached copy of this letter in the space provided.

Very truly yours, Standard Oil Company of California, J. L. Spaith, Assistant to the District Manager.

Accepted and Agreed: Walter E. Hannah.

J. L. S.

[fol. 2390] GOVERNMENT EXHIBIT No. 23–O

SS-7333-CDA

San Francisco, California; Date March 4, 1948.

Mr. Verne Mortimer, 304 East "A" Street, Ontario, California.

DEAR MR. MORTIMER:

Please refer to the following agreement(s) as now operative between us:

Lease dated .....
Sublease dated .....
Dealer Agreement TBA dated ..... February 1, 1946
Petroleum Products and Equipment Agreement dated .....

The leased real property or premises, as the case may be, referred to in said agreement(s) (is) (are) located at 304 East "A" Street, City of Ontario, County of San Bernardino, State of California, more particularly described as follows:

304 East "A" Street, Ontario, California.

It is hereby mutually agreed to terminate said agreement(s) together with each and all respective rights, obligations, and liabilities of said parties thereunder, effective as of March 13, 1948.

Please signify your agreement to the foregoing by signing in the space provided below.

Yours truly, Standard Oil Company of California,
By W. G. Watson, Attorney in fact.

Agreed To: Verne Mortimer.

[fol. 2391] GOVERNMENT EXHIBIT No. 23–Q

San Francisco, California, September 26, 1947.

Competitive Lubrication Oils, Chevron Truck Stations

Mr. H. R. Cuyler, Attention: Mr. R. W. Goodale.

Mr. C. T. Furrer reports that Union T5-X oil is being carried by the Ransome Truck Service, 7200-CDA, at San

Luis Obispo, purposely for two accounts. The one is the Western Truck Company, South Highway 101, San Jose, managed by A. D. Wolley and Sons and operating 9 large diesel and 4 butane trucks as well as other small equipment. The other account is Don Keith, Corcoran, California, who operates 9 large diesel trucks.

We suggest your having someone call on these trucking companies in an effort to convert these accounts to the use of our RPM Heavy Duty Motor Oil. Please keep us advised as to the success you have in handling this matter.

E. D. Thompson, J. L. S.

JL:FF.

[fol. 2392] GOVERNMENT EXHIBIT No. 23-R

Long Beach 2, California, October 27, 1947.

SS-7333-CDA, Ontario, California

Mr. J. L. Burke, Pomona.

We have been advised that our truck station SS-7333-CDA is carrying from one to two barrels of Union Oil Company's T5-X for the purpose of servicing two local truck companies, namely Dean Beck and John Corkindale.

We have requested the assistance of Mr. A. H. Kannady to displace this competitive stock.

Will you please advise this office when the competitive oils have been removed.

C. T. Furrer.

War:ms.

cc: Mr. A. H. Kannady, Long Beach.

Mr. Kannady: Please refer to our CHG letter of September 22nd. Are you in a position at this time to furnish any information concerning the above?

C. T. F.

GOVERNMENT EXHIBIT NO. 23-S

MEMORANDUM GO-144

C.T.C. 2

To C.D. Jones Long Beach 12-15 1941 1947

From Hoult San Luis Obispo

Ramona Co 7200 CPA OUR FILE

T5X Union Diesel Oil. YOUR FILE

Reports know 7200CPA are stocking Union Oil Co's T5X Diesel Engine Lubricating Oil.

We are quite unhappy about this situation and are ready to have them discontinue this line of merchandise if this cooperation can be secured.

They will cooperate if truck stations of Santa Maria no longer handle T5X.

They do not want to lose their trade to Santa Maria and feel that if both companies refuse to handle the clothe station.

Please give me some [illegible]

Thanks

A. Hoult

WHEN REPLY IS REQUIRED, FORWARD ORIGINAL AND ONE COPY. GO 144 (20M-8-47)

14321A

MEMORANDUM GO-144

TO: Mr. Postlewaite, Mr. Courtright, Mr. Sandberg, Mr. Stoneback — 12-29 — 1942

FROM: A. L. Peterson, San Luis Obispo

SUBJECT: T5X - Ramona Co. CPA 7200

OUR FILE

YOUR FILE

Re Post Corporation T5X and including Santa Maria Garage Station

I have this date inventoried the T5X on hand as CPA 7200 - which was a total of 128 gallons on hand -

Mr. Secura will discontinue its sale when this has been disposed of which should be on or before Jan 15 - 1948.

Mr. Cozadi requests that the contact for manager of Oakland & San Jose in order to switch their trucks over to our T5X Dealers. I recommend we again contact Post and on this subject and ask for an answer from them after they have made survey.

We will have much disappointed if the dealer business is not discontinued as we had - and soon -

WHEN REFLY IS REQUIRED, FORWARD ORIGINAL AND ONE COPY.

GO-144 (30M-8-47)

2394

14341R

(Here follows 1 Photolithograph, side folio 2396)

GOVERNMENT EXHIBIT NO. 23-U

STANDARD OIL COMPANY OF CALIFORNIA

San Francisco, California
January 5, 1948

JAN -6 1948
C T FURRER

Personal

COMPETITIVE LUBRICATING OILS
CHEVRON GAS STATIONS
C.H.G. 12-31-47

MR. C. T. FURRER
LONG BEACH

Needless to say, we were very pleased to receive your letter of 12-31-47 informing us of the success you have had in displacing competitive lubricating oils at your Chevron units 7200-CDA and 7277-CDA located in San Luis Obispo and Santa Maria, respectively.

Hearty congratulations! There is little doubt in our mind but that with your outstanding efforts you will soon have Messrs. Beck and Corkindale in line with your SS-7333-CDA in Ontario.

We shall continue to follow your progress with great interest.

W. A. FRAZER

WAF

(Here follow 2 Photolithographs, side folios 2393, 2394)

[fol. 2395] GOVERNMENT EXHIBIT No. 23-T

STANDARD OIL COMPANY OF CALIFORNIA

Long Beach, California, December 31, 1947.

Competitive Lubricating Oils, Chevron Truck Stations

J. L. L., 12/4/47
C. H. G., 12/9/47

Mr. W. A. Frazer, San Francisco.

This is to inform you that we have been successful in displacing competitive oils at our Chevron Units 7200-CDA and 7277-CDA located in San Luis Obispo and Santa Maria, respectively.

We are concentrating on our SS-7333-CDA in Ontario at present and will advise you at a later date in respect to our success in selling Messrs. Beck and Corkindale.

C. T. Furrer.

CHG:ew.

[fol. 2397] GOVERNMENT EXHIBIT No. 23-V

Long Beach 2, California, January 19, 1948.

Competitive Lubricating Oils, Chevron Gas Stations

Mr. J. L. Burke,
Pomona.

Reviewing our correspondence on the above subject we note that Mr. Corkindale expressed a desire to try our RPM Motor Oil in the equipment for which he had been purchasing Union TX5.

As we are most anxious to displace the competitive oil at your Station 7333-CDA in Ontario, would you please advise us of your recent contacts with Mr. Corkindale in respect to the future use of our motor oils; also, your thoughts as to why the competitive oils at this unit should not be displaced at once.

C. T. Furrer.

CHG:ms.
cc: Mr. A. H. Kennedy—Long Beach.

[fol. 2398] GOVERNMENT EXHIBIT No. 23-W

Long Beach, California, January 22, 1948.

Santa Maria Truck Station

Mr. G. C. Calden,
Santa Barbara.

For your information, on the writer's recent trip north, discussion was had with Mr. Estabrook and Mr. Gerritsen over the removal of the competitive oils.

Mr. Estabrook, of course, tried to bring out the point that he would undoubtedly lose considerable diesel fuel business and revenue to himself due to not being able to supply the competitive oils. However, we remained firm in our attitude and Mr. Estabrook knows all competitive oils are to be removed as soon as his present supply is sold.

We would like you to follow through and see that this is done, and also that the lumber which is now stored on the service station property is removed.

Please let us know when both of these matters have been taken care of.

C. T. Furrer.

WBB:VS.
cc: Mr. W. P. Gerritsen—Santa Maria.

(Here follow 4 Photolithographs of folios 2399, 2400; 2401, 2402)

MEMORANDUM GO-144

TO G C Calden Santa Barbara 2/13/46 194

FROM C. T. Furrer WAR Long Beach

OUR FILE WBB 1/22 SUBJECT Santa Maria Truck Station

Please refer to our letter of above date.

Are you now in a position to report whether or not the competitive oils have been removed from this station and also the lumber which is stored on the property

CT F.

cc WF Gerritsen
Santa Maria

WHEN REPLY IS REQUIRED, FORWARD ORIGINAL AND ONE COPY

GO 144 (30M-10-46)

WHEN REPLY IS REQUIRED, FORWARD ORIGINAL AND ONE COPY.

GO 146 (30M-8-47)

GOVERNMENT EXHIBIT NO. 23-X

MEMORANDUM GO-144

~~4~~ 3.33

TO Mr. C. J. Jones Jan 22 1945

FROM Clark 1488

SUBJECT: Competitive Lubricating Oils OUR FILE

Chevron Gas Stations YOUR FILE

Referring to our recent conversation regarding competitive [redacted] Sec 1333 Cl. 8-

Mr. Mahoney requested me to discontinue to sling any competitive oil in the system.

Our Mr. Stan Plum & John Thackrey engineer will call on Mr. Carmichael in respect to future use of our motor oils.

GOVERNMENT EXHIBIT NO. 24

San Francisco, California
May 8, 1947.

TRUCK REGISTRATION AND FULL REQUIREMENTS
PACIFIC COAST STATES

MR. H. R. CUYLER:

ATTENTION: MR. G. L. NEELY

Attached you will find a copy of the above subject letter which was kindly furnished to us by Mr. C. H. Lais:

Your note on this letter suggesting that you would like to co-operate with us to improve the sale of RPM Heavy Duty Motor Oil and RPM Delo is very timely. In this regard, we feel that much progress can be made with commercial haulers who are now utilizing our truck station facilities, but prefer competitive brands of oil.

We will develop information on these various commercial accounts through the Districts where we have truck station representation and will furnish you with the names and locations in order that adequate follow-up can be made, possibly utilizing your F & L organization towards securing this important business.

In connection with this type of contact we are wondering what success has been achieved in the balance of the contacts submitted to you in March as a result of Mr. Tuller's contact with the Redding Truck Station.

E. L. THOMPSON

Attach:

2401

GBM:CL

the plans Mr. Goodale outlined some time ago through his representative, Mr. Texada.

Will you please continue to keep us advised of all new developments.

E. D. Thompson

MBN:FF

[fol. 2409] GOVERNMENT EXHIBIT No. 24-H

San Francisco, California, February 5, 1948.

Competitive Lubricating Oils, Chevron Truck Stations

Mr. H. R. Cuyler:

Attention: Mr. R. W. Goodale

Since September we have been contacting your office with regard to the competitive lubricating oil problem existing at our Chevron Truck Stations. To date, there has been some encouraging progress made in the solicitation of the number of trucking firms requesting competitive brands at our stations. As in the case of Long Beach, activity of this nature was responsible for the elimination of competitive oils at all of their units catering to the trucking trade.

Although we certainly appreciate the difficulties at hand and the time element that must be taken into consideration in work of this kind, nevertheless, we should like a report of the situation as it now stands.

Is the Company making any inroads toward the conversion of the following accounts to the use of our RPM Heavy Duty Motor Oil?

Leo Murphy, Pasadena.
Hugh Speed, Los Angeles.
Richies Hog Ranch, Ashland, Oregon.
Azusa Transfer Company, Azusa.
Anaheim Truck & Transfer Company, Anaheim.
M & L Truck Service, Los Angeles.
Pacific Coast Truck Lines, Los Angeles.
Roland Taber, Visalia.
Sissler Brothers, Klamath Falls, Oregon.
West Coast Trucking Company, Los Angeles—As listed by the San Francisco District.

GOVERNMENT EXHIBIT NO. 24-A

3 KUL

STANDARD OIL COMPANY OF CALIFORNIA

San Francisco, California
May 16, 1947

TRUCK REGISTRATION AND FUEL
REQUIREMENTS - PACIFIC COAST STATES
Your WAF 5/8/47

MR. E. D. THOMPSON,
Building

We are attaching copies of correspondence indicating what has been done with regard to the contacts submitted to us by Mr. Tuller. In addition, we plan to utilize the services of Mr. G. P. Texada, one of our Specialists, to call on the accounts submitted to us by Mr. Tuller and endeavor to switch them from T5X to RPM Heavy Duty Motor Oil. We will shortly be marketing an improved RPM Heavy Duty Motor Oil in the very near future, and we do not contemplate any difficulty in switching these accounts from Union T5X.

As soon as you furnish us information on various commercial accounts through the Districts where you have truck station representation, we will be glad to assist by working with the Districts and suggesting that they utilize our Fuel & Lubricant Engineer in connection with this work.

sentation, we will be glad to assist by working with the Districts and suggesting that they utilize our Fuel & Lubricant Engineer in connection with this work.

[fol. 2403] GOVERNMENT EXHIBIT NO. 24-B

San Francisco, California, August 14, 1947.

Competitive Lubricating Oils, Chevron Truck Stations

F. C. Eastman, SLC,
R. T. Vivian, Spokane,
S. E. Stretton, Seattle.

For some time past we have been concerned over inroads made by competitive oil companies in placing their lubricating oils with our Chevron truck stations. The Union Oil Company with their T5-X have been particularly active.

Combatting this problem requires primarily, sales and educational work with the Dealer involved and second, possibly outside solicitation of trucking firms where headquarter points are located in another District.

We feel certain that you have sales and educational plans under way at any stations where competitive oils are now on hand. However, regarding outside solicitation, Mr. Goodales' Division is anxious to cooperate with you to eliminate any problem involved. It will be of interest to you to learn that the Lubricants Division is now engaged in a series of contacts with several coast trucking firms. These contacts are designed to sell the trucker upon the use of our lubricating oils, both at headquarter points, as well as on the road.

Of the firms contacted, we have been informed that Pacific Coast Motor Freight of Portland, and Acme Transportation Company, Oakland, have instructed their drivers to use RPM Heavy Duty Motor Oil while on the road. Encouraging progress has been made also with the West Coast Trucking Company in Los Angeles.

If you have a competitive oil problem with any of your truck stations, we should like to be advised both as to product and trucking company or companies involved. If the trucker headquarters outside of your District, we shall then supplement your sales efforts at the station with the help of the Lubricants Division.

We should also like to know if either the Pacific Coast Motor Freight or the Acme Transportation Company are purchasing RPM Heavy Duty at your stations in the event they are hauling through your District.

We are prepared to assist you in your plans to eliminate

competitive oils at your truck stations if you are faced with this problem.. May we hear from you on this subject at your early convenience.

W. A. Frazer.

GBM:FF.

[fol. 2404] GOVERNMENT EXHIBIT No. 24-C

San Francisco, California, August 14, 1947.

Competitive Lubricating Oils, Chevron Truck Stations

G. C. Briggs, Fresno,
F. R. Meyer, SF,
H. E. Gunnels, Phoenix.

For some time past we have been concerned over inroads made by competitive oil companies in placing their lubricating oils with our Chevron truck stations. The Union Oil Company with their T5-X have been particularly active.

Combatting this problem requires primarily, sales and educational work with the Dealer involved and second, possibly outside solicitation of trucking firms where headquarter points are located in another District.

We feel certain that you have sales and educational plans under way at any stations where competitive oils are now on hand. However, regarding outside solicitation, Mr. Goodales' Division is anxious to cooperate with you to eliminate any problem involved. It will be of interest to you to learn that the Lubricants Division is now engaged in a series of contacts with several coast trucking firms. These contacts are designed to sell the trucker upon the use of our lubricating oils, both at headquarter points, as well as on the road.

Of the firms contacted, we have been informed that Pacific Coast Motor Freight of Portland, and Acme Transportation Company, Oakland, have instructed their drivers to use RPM Heavy Duty Motor Oil while on the road. Encouraging progress has been made also with the West Coast Trucking Company in Los Angeles.

If you have a competitive oil problem with any of your truck stations we should like to be advised both as to product and trucking company or companies involved. If the trucker headquarters outside of your District, we shall-

then supplement your sales efforts at the station with the help of the Lubricants Division.

We should also like to know if either the Pacific Coast Motor Freight or the Acme Transportation Company are purchasing RPM Heavy Duty at your stations in the event they are hauling through your District.

We are prepared to assist you in your plans to eliminate competitive oils at your truck stations if you are faced with this problem. May we hear from you on this subject at your early convenience.

W. A. Frazer.

GBM:FF.

[fol. 2405] GOVERNMENT EXHIBIT No. 24-D

San Francisco, California, August 14, 1947

Competitive Lubricating Oils Chevron Truck Stations

Mr. E. V. Burns, Portland

For some time past we have been concerned over inroads made by competitive oil companies in placing their lubricating oils with our Chevron truck stations. The Union Oil Company with their T5-X have been particularly active.

Combatting this problem requires primarily, sales and educational work with the Dealer involved and second, possibly outside solicitation of trucking firms where headquarter points are located in another District.

We feel certain that you have sales and educational plans under way at any stations where competitive oils are now on hand. However, regarding outside solicitation, Mr. Goodales' Division is anxious to cooperate with you to eliminate any problem involved. It will be of interest to you to learn that the Lubricants Division is now engaged in a series of contacts with several coast trucking firms. These contacts are designed to sell the trucker upon the use of our lubricating oils, both at headquarter points, as well as on the road.

Of the firms contacted, we have been informed that the Acme Transportation Company, Oakland, have instructed their drivers to use RPM Heavy Duty Motor Oil on the road, and as you know, your solicitation efforts with the Pacific Coast Motor Freight of Portland have also met with

success. Encouraging progress has been made also with the West Coast Trucking Company in Los Angeles.

If you have a competitive oil problem with any station handling over-the-road truckers, we should like to be advised both as to product and trucking company or companies involved. If the trucker headquarters outside of your District, we shall then supplement your sales efforts at the station with the help of the Lubricants Division.

We should also like to know if the Acme Transportation Company are purchasing RPM Heavy Duty at your stations in the event they are hauling through your District.

We are prepared to assist you in your plans to eliminate competitive oils at your truck stations if you are faced with this problem. May we hear from you on this subject at your early convenience.

W. A. Frazer

GBM:FF

[fol. 2406] GOVERNMENT EXHIBIT No. 24-E

San Francisco, California, August 14, 1947

Competitive Lubricating Oils Chevron Truck Stations

Mr. C. S. Lincoln, SD; Mr. C. T. Furrer, LB; Mr. J. S. Gordon, Bksfield

For some time past we have been concerned over inroads made by competitive oil companies in placing their lubricating oils with our Chevron truck stations. The Union Oil Company with their T5-X have been particularly active.

Combatting this problem requires primarily, sales and educational work with the Dealer involved and second, possibly outside solicitation of trucking firms where headquarter points are located in another District.

We feel certain that you have sales and educational plans under way at any stations where competitive oils are now on hand. However, regarding outside solicitation, Mr. Goodales' Division is anxious to cooperate with you to eliminate any problem involved. It will be of interest to you to learn that the Lubricants Division is now engaged in a series of contacts with several coast trucking firms. These contacts are designed to sell the trucker upon the use of our

lubricating oils, both at headquarter points, as well as on the road.

Of the firms contacted, we have been informed that Pacific Coast Motor Freight of Portland, and Acme Transportation Company, Oakland, have instructed their drivers to use RPM Heavy Duty Motor Oil while on the road. Encouraging progress has been made also with the West Coast Trucking Company in Los Angeles.

If you have a competitive oil problem with any of your truck stations, we should like to be advised both as to product and trucking company or companies involved. If the trucker headquarters outside of your District, we shall then supplement your sales efforts at the station with the help of the Lubricants Division.

We should also like to know if either the Pacific Coast Motor Freight or the Acme Transportation Company are purchasing RPM Heavy Duty at your stations in the event they are hauling through your District.

We are prepared to assist you in your plans to eliminate competitive oils at your truck stations if you are faced with this problem. May we hear from you on this subject at your early convenience.

W. A. Frazer

GBM:FF

[fol. 2407] GOVERNMENT EXHIBIT No. 24-F

STANDARD OIL COMPANY OF CALIFORNIA

Fresno, California, October 27, 1947

Competitive Lubricating Oils Chevron Truck Stations Tap
10-1-47.

Mr. R. W. Goodale, San Francisco:

In reply to your above letter, we wish to report that Mr. Don Keith of Corcoran has been contacted in regard to our RPM Heavy Duty Motor Oil. This Diesel Truck operator had been using Associated products, and particularly Associated Cadel, for a number of years. However, the Associated Cadel was not giving him the service he figured it should and a friend of his suggested that he try Union Oil Company's product T5X. He has, for some time now, been

using Union T5-X and has found it very satisfactory and advised our representative that he could see no reason for making a change as long as the product was satisfying his needs.

Mr. Keith is a user of our Standard Diesel Fuel and various other products and likes to do business with our Chevron Truck Stations. Our representative was told that he has even gone so far as to write our Company a letter asking them, for his convenience, to stock the Union product at the various stations along his runs.

At present it seems that Mr. Keith is not ready to make a change in regard to his lubricating oil; however, we shall maintain our contacts with him.

G. C. Briggs

HOG:meg.

[fol. 2408] GOVERNMENT EXHIBIT No. 24-G

San Francisco, California, February 17, 1948.

Competitive Lubricating Oil Chevron Truck Stations
Mr. H. R. Cuyler, Attention: Mr. R. W. Goodale:

Please refer to your notation on your letter of February 5.

While we can give no additional information on the trucking accounts we listed, in many cases Districts, in submitting their reports on the competitive problem, did mention specific stations at which competitive motor oils were being sold.

Truckers—Cronin and Williamson are demanding other brands than our own at Bakersfield's station in Wheeler Ridge. The other firms listed by Bakersfield apparently are purchasing through the Greenfield Truck Station.

In the San Francisco District we are told the problem exists at all of their truck stations, whereas Fresno merely mentions the Mammoth Truck Station, and Sacramento the Woodland Truck Terminal.

There is no doubt but that the introduction of RPM DELO Special will furnish new impetus for renewed solicitation of these and other accounts who are insisting on the purchase of competitive oils at our Chevron Truck Stations. We are looking forward to much improvement as a result of

H. R. CUYLER

CHL:saw

Attachment

Mr. Fuller
Please write the districts
concerned, each o/c
separately and ask them
to set up the Muck Thru
operation to follow the
and ask for a report by which
we will be guided in
if these o/c's in our
Please let us see the
release to
5/16

14388

Montero Trucking Company, Sacramento.
Chesley Trucking Co., Long Beach.
Belyea Trucking Company, Los Angeles.
Grocer's Packing Company, Los Angeles.
C. A. Knapp, Los Angeles.
Cronin Co., Los Angeles.
W. F. Williamson, King City—As listed by the Bakersfield District.
Western Transportation, San Jose.
Exley Produce Express, Portland, Oregon.
Belyea Trucking Company, Los Angeles.
Roland Taber, Visalia.
C. K. Randall, Los Angeles.
King County Truck Lines, Fresno and Tulare.
Coly Transportation, San Diego.
Borns Brothers, Selma.
Permanente Cement Co., Permanente.
Garboldi Bros., Los Angeles.
West Coast Fast Frt., Los Angeles.
Imperial Truck Lines, Maywood—As listed by the Fresno District.
Roland Taber, Visalia—As listed by Sacramento District.

We shall be grateful for any information you are able to give us at this time.

E. D. Thompson.

[fol. 2410] GOVERNMENT EXHIBIT No. 24-I

San Francisco, California, February 3, 1948.

Competitive Lubricating Oils, Chevron Truck Stations

WBB 1-30-48

Mr. C. T. Furrer,
Long Beach,

Your news of January 30 informing us of your complete success in removing competitive oils at all your truck stations was extremely gratifying.

This is excellent work and is quite in line with the usual efforts emanating from the Long Beach District. We are more than pleased with all the help you have given us in solving this rather difficult problem, particularly in con-

verting the Corkindale account to the use of our RPM Heavy Duty Motor Oil.

W. A. Frazer.

JLL:FF.

CC: Mr. H. R. Cuyler: Attn: Mr. R. W. Goodale.

[fol. 2411] GOVERNMENT EXHIBIT No. 53

STANDARD OIL COMPANY OF CALIFORNIA

San Francisco, California, August 29, 1947.

Union Square Garage Corporation,
San Francisco, California,

GENTLEMEN:

Please refer to the Distributor Agreement as now operative between us, dated February 21, 1941, covering your petroleum products requirements in the operation of the sub-surface garage under Union Square in San Francisco.

In consideration of the installation by us of certain additional lubrication facilities at the Union Square Garage in accordance with the Exhibit "A" attached hereto and made a part hereof, it is agreed that said Distributor Agreement shall be modified as follows:

1. We agree to install the equipment and make the improvements shown on said Exhibit "A". We shall retain title to all such equipment and improvements as shown on said Exhibit "A".

2. You shall pay us advance rental in the amount of five thousand dollars ($5,000.00) for the use of such additional lubrication equipment and facilities, which shall be due and payable on the first day of the month following the month when work on such lubrication facilities has been completed. Such advance rental represents a monthly rental of Eighty-three Dollars and Thirty-three Cents ($83.33) during a period commencing upon the aforesaid date when said advance rental payment becomes due and payable and continuing thereafter for Sixty (60) months.

We understand that the Union Square Garage, Inc. is operating said garage under the terms of a Garage Management Agreement with you. Under such agreement the

latter corporation accounts to you for all operating costs; therefore, you hereby direct us to invoice such latter corporation for the amount of the advance rental involved herein.

3. Upon expiration of the Sixty (60) month period following said commencement date, we agree to give you a Bill of Sale to all such facilities and improvements provided for hereunder, provided that you have complied with all the terms and provisions of said Distributor Agreement, and you have not exercised any right you may have to terminate said Distributor Agreement (except for our default).

[fol. 2412] 4. All said facilities so installed by us under Exhibit "A" shall be maintained and repaired at your own expense and you shall pay all taxes assessed against such facilities.

As modified above, said Distributor Agreement is hereby ratified and confirmed.

Please signify your agreement to the foregoing by signing in the space provided below on the duplicate, triplicate and quadruplicate copies of this letter agreement.

Yours very truly, Standard Oil Company of California, By W. G. Watson, Attorney in fact.

Accepted and Agreed to:

Union Square Garage Corporation
By —— ——.

Pursuant to the terms of the Garage Management Agreement between the undersigned corporation and Union Square Garage Corporation and in consideration of Standard Oil Company of California's agreement to make the improvements as provided above, the undersigned hereby agrees to pay the rental hereinabove provided.

Union Square Garage, Inc., by Andrew L. Pansini.

AUSP., JWY.

[fol. 2413] EXHIBIT "A"

1. Marlite Lubrication Background.

2. Aro Air Service Hose Reel.

1. Aro Water Service Hose Reel.

6. Aro Motor Oil Service Hose Reel.
3. Aro Chassis Service Hose Reel.
2. Aro Gear Oil Service Hose Reel.
6. Aro Motor Oil Pumping Units.
2. Aro Gear Oil Pumping Units.
2. Globe Roll on Semi-Hydraulic Hoists.
2. Globe Lume Jacks for Roll On Hoists.
6. Special Lube Oil Tanks.
2. Special Drain Oil Boxes and Hoses.
8. Slim Line Fixtures.
4. Plugs in Background.

Installation of above items.

W. G. W.

[fol 2414] STANDARD OIL COMPANY OF CALIFORNIA

Standard Oil Building

San Francisco, 20, Cal., March 1, 1945.

Union Square Garage Corporation, 114 Sansome Street, San Francisco, California.

GENTLEMEN:

Please refer to that certain Distributor Agreement dated February 21, 1941, as now operative between us covering the operation of a garage located under Union Square in the City and County of San Francisco, State of California.

Reference is more particularly made to paragraph 1 of said Distributor Agreement wherein it is provided that the term of said agreement shall continue for a period of thirty (30) years, or until all of the Preferred Stock of Distributor shall have been redeemed at par, plus accrued dividends thereon, whichever period is longer.

It is our understanding that you are about to redeem said Preferred Stock and substitute in its place and stead interest bearing debentures. In the event said redemption

and substitution is made by you, it is mutually agreed that paragraph 1 of said Distributor Agreement shall be hereby amended to read as follows:

> "Standard Oil Company of California, a corporation, hereinafter called 'Company', hereby appoints Union Square Garage Corporation, hereinafter called 'Distributor', a 'Standard Stations, Inc. Authorized Distributor' for the distribution of such merchandise as is currently sold at service stations operated by Standard Stations, Inc., in Distributor's Area, including Atlas Tire, Atlas Tubes, and Atlas Batteries, for a term commencing upon the date the Union Square Garage, San Francisco, California, opens for business and continuing for a term of thirty (30) years from and after such date, or until all of the debentures of Distributor shall have been redeemed at par, plus accrued interest thereon, whichever period is longer; provided, however, this contract shall be terminable by Company at any time upon giving Distributor thirty (30) days notice in writing of intention so to terminate."

Except as modified herein all of the terms and provisions of said Distributor Agreement are hereby ratified and confirmed.

Please signify your agreement to the foregoing by signing in the space provided below.

Yours very truly, Standard Oil Company of California, By W. G. Watson, Attorney in fact.

Accepted and Agreed To: Union Square Garage Corporation, By C. H. Wall, Pres.

[fol. 2415] STANDARD STATIONS, INC.

225 Bush Street

San Francisco, Cal., September 9, 1942.

Union Square Garage Corporation, San Francisco, California.

GENTLEMEN:

Please refer to the Distributor Agreement between you and Standard Oil Company of California, dated February

21, 1941, covering the operation of the subsurface garage under Union Square in San Francisco.

In the paragraph entitled "Appointment," the Distributor Agreement provides for a specified term commencing on the date the Union Square Garage opens for business. Since the opening date has now been set for September 14, 1942, we shall consider that date as the commencement date of the Distributor Agreement.

In the paragraph of the Distributor Agreement entitled "Other Merchandise," Standard Oil Company of California agrees to allow you certain commissions or differentials below the selling price on non-petroleum merchandise supplied you under the agreement. Under the terms of the Garage Management and Occupancy between you and Union Square Garage, Inc., the latter corporation will operate the garage. In view of this, we will arrange to have any commissions payable under provisions of paragraph entitled "Other Merchandise" of the Distributor Agreement paid to Union Square Garage, Inc., unless and until notified by you to the contrary.

In the paragraph entitled "Payment," the Distributor Agreement specifies certain rentals to be paid by you for equipment to be furnished by Standard Oil Company of California. The following equipment has been furnished and monthly rental is indicated opposite each item:

	Per Month
4 Chek-Charts	$1.00
2 Battery Chargers	2.00
2 Capacifesters	1.50
7 Cash Boxes with Windshield Servicer	2.35
13 Bottle Stands with Trays	.75
Total	$7.60

[fol. 2416] We will bill Union Square Garage, Inc. for this rental in accordance with your Garage Management and Occupancy Agreement with the operator.

Please signify your agreement to the foregoing by signing in the space provided below.

Yours very truly, Standard Stations, Inc., by R. N. Aldrich.

Accepted and Agreed to: Union Square Garage Corporation, By C. H. Wall, Pres.

[fol. 2417] March 17, 1942.

Mr. Carlton H. Wall, President Union Square Garage Corporation, 114 Sansome Street, San Francisco, California.

DEAR MR. WALL:

Reference is made to recent conversation.

Attached is a copy of the Distributor Agreement entered into between Union Square Garage Corporation and Standard Oil Company of California. We believe you may wish to give this copy of the agreement to Mr. Pansini.

Yours very truly, R. N. Aldich, F. N. N.

Attach.

cc. Mr. H. R. McFeeters. Attached is a copy of the Distributor Agreement between our Company and Union Square Garage Corporation.

R. N. Aldrich.

AMH:RW

[fol. 2418] DISTRIBUTOR AGREEMENT

Appointment

Standard Oil Company of California, a corporation, hereinafter called "Company", hereby appoints Union Square Garage Corporation, hereinafter called "Distributor", a "Standard Stations, Inc. Authorized Distributor" for the distribution of such merchandise as is currently sold at service stations operated by Standard Stations, Inc., in Distributor's Area, including Atlas Tires, Atlas Tubes, and Atlas Batteries, for a term commencing upon the date the Union Square Garage, San Francisco, California opens for business and continuing for a term of thirty (30) years from and after such date, or until all of the Preferred Stock of Distributor shall have been redeemed at par, plus accrued dividends thereon, whichever period is longer; provided, however, this contract shall be terminable by Company at any time upon giving Distributor thirty (30) days notice in writing of intention so to terminate.

Quantity

Company agrees to sell to Distributor, and Distributor agrees to buy from Company, and stock and offer for sale,

all of Distributor's requirements of petroleum products used or sold or bought to be used or sold by Distributor in the conduct of its business in that certain subsurface garage under Union Square in the City and County of San Francisco, State of California. Company agrees to sell to Distributor such petroleum products as shall be required to meet Distributor's requirements, which shall include those brands of gasoline, lubricating oils, and other petroleum products then currently sold at service stations operated by Standard Stations, Inc., in Distributor's area.

Brand Names

It is understood and agreed that the product or products received from Company hereunder will be sold to the public as the product or products of Company under Company's regular trade-marks and brands for such product or products. Distributor is not to use, in connection with the sale and/or advertisement for sale of said product or products, any trademark or trade name other than those regularly used by Company for such product or products, unless expressly consented to in writing by Company. Upon written notice from Company or upon any termination of this contract, Distributor shall discontinue the use, in any manner, of Company's trademarks or trade names.

Location

Distributor's requirements hereunder shall be delivered at such times and in such quantities as shall be needed by Distributor in the normal conduct of its business at its garage located in the subsurface of Union Square in the City and County of San Francisco.

Other Merchandise

Company agrees to sell or consign to Distributor, and Distributor agrees to purchase or receive from Company, and stock and offer for sale, all of Distributor's requirements of tires, tubes, batteries, and other non-petroleum merchandise used or sold or bought to be used or sold by Distributor upon the premises hereinbefore described, to the fullest extent to which Company shall be able to furnish such non-petroleum merchandise to Distributor. The tires, tubes, batteries, and other non-petroleum merchandise to

be supplied to Distributor hereunder shall be Company's regular line of Atlas tires, Atlas tubes, Atlas batteries, and other non-petroleum merchandise then currently being sold at service stations operated by Company in Distributor's area. Company shall be obligated to deliver such merchandise hereunder only so long as the same is being sold generally in service stations operated by Company in Distributor's area, and Distributor shall have the right to purchase or receive from others such non-petroleum merchandise as may be not then currently sold by Company at its service stations in Distributor's area. Whether tires, [fol. 2419] tubes, batteries, and other non-petroleum merchandise which Distributor agrees to handle hereunder shall be consigned or sold to Distributor shall depend on Company's current policies, but Distributor shall have the right to handle such merchandise on a consignment basis during such time or times as similar merchandise is consigned to dealers in Distributor's area by a majority of the major oil companies hereinafter named. Company agrees to allow Distributor commissions, or the equivalent thereof in differentials below the selling price thereof, as set forth in schedules to be furnished Distributor from time to time; provided, however, that the prices, differentials and commissions applicable to such merchandise shall at all times be no less favorable to Distributor than those available to Company's other dealers in Distributor's area. All expenses of the storage, handling, sale, and distribution at or from the garage of products and merchandise consigned or sold to Distributor under the terms of this or any other paragraph hereof shall be paid by Distributor. The proceeds of the sale of consigned merchandise shall be held by Distributor as trustee for Company and paid over to Company on demand.

Prices for Petroleum Products

The prices charged for petroleum products sold to Distributor and the commissions allowed for petroleum products consigned by Company to Distributor, shall be Company's posted prices or commissions, as the case may be, to its dealers generally at the time and place of sale or consignment to Distributor, for the particular products and type of delivery involved, except that such prices shall not be more than, nor such commissions be less than those

charged or allowed generally by a majority of the following corporations for similar deliveries of products of like grade and quality to dealers generally in the area in which Distributor's garage will be located:

Texaco Corporation.
Tidewater Associated Oil Company.
Union Oil Company of California.
Shell Oil Company of California.
Richfield Oil Company of California.
General Petroleum Corporation of California.
Standard Oil Company of California.

Whether petroleum products which distributor handles hereunder shall be consigned or sold to Distributor, shall depend on Company's current policies followed with respect to Company's other dealers generally in Distributor's area.

Selling Prices

Any and all products sold or consigned to Distributor hereunder shall be sold by Distributor at not less than Company's Authorized retail price therefor at time and place of sale, and said products shall not be advertised, offered for sale, or sold at a lower price.

Advertising

Upon any termination of this agreement, Company shall have the right to remove any and all signs and advertising matter and any other property placed on the premises by Company. Upon such termination, Distributor agrees to paint out any signs or colors at the garage which may indicate in any way that Company's products are sold thereon.

Operation of Station

Distributor agrees to promote diligently the sale of products and merchandise delivered to Distributor hereunder, and to use Distributor's best efforts to increase the sale thereof, while and to the extent that Distributor is handling Company's products hereunder.

[fol. 2420] Distributor's Responsibility

Distributor shall be responsible for all loss of or damage to consigned goods belonging to Company in Distributor's possession. Distributor agrees to protect, defend, and hold

Company, harmless from and against any and all claims or demands for damage to property, or for injury to or death of any persons, directly or indirectly resulting from any acts or omissions of Distributor or Distributor's employees under this contract. Any and all consigned goods in Distributor's possession upon any termination of this contract shall be returned to Company.

Company will protect, defend, and hold Distributor harmless from and against any and all claims or demands for damage to property or for injury to or death of any persons occasioned or alleged to be occasioned by defective merchandise delivered to Distributor by Company.

Payment

Distributor agrees to pay to Company as follows for such advertising material as may be furnished by Company to Distributor hereunder, payment to be made monthly in advance:

$2.75 per month for each Chevron Sign
1.00 per month for each Battery Charger
.75 per month for each Capacitester
.25 per month for each Chek Chart

Terms on Products Purchased by Distributor

Net cash at time of delivery, except at Company's option. If at any time Distributor shall fail to make any payment due hereunder, such failure shall, at Company's option, be deemed by Company to be a breach of the entire contract, and Company may suspend deliveries until such payment has been made or may terminate this contract. No such suspension or termination shall, however, affect any obligation of Distributor hereunder.

Charge or Tax

Any tax, or the amount thereof, now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, or manufacture of the goods the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Distributor on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for, including maximum prices.

Prevention of Performance

If Company is prevented from or hindered in making deliveries hereunder due to fire, riot, labor disturbances, earthquakes, war, acts of any government (whether foreign or domestic, federal, state, county or municipal), accident, total or partial failure of transportation or delivery facilities or supplies, shortage of products deliverable under this contract due to a shortage in the supply of crude oil produced in the State of California, or any cause beyond its control whether similar to the foregoing causes or not, the obligation of Company to make deliveries during the period of such disability shall be suspended. During such times as the Company shall be prevented from or hindered in the making of deliveries hereunder for and on account of any of the causes hereinbefore named, Distributor shall have the absolute right to fill its requirements of petroleum and non-petroleum products herein agreed to be sold by Company to Distributor, from any other source whatsoever.

Conduct of Distributor's Business

It is understood and agreed that Distributor in the performance of this agreement is engaged in an independent business, and nothing herein contained shall be construed as reserving to Company any right to control Distributor with respect to his physical conduct in the performance of this agreement. It is further understood and agreed that Company reserves no right to exercise any control over any of Distributor's employees and that all employees of the Distributor shall be entirely under the control and direction of Distributor. Distributor undertakes and agrees that he will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of [fol. 2421] this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Distributor accepts exclusive liability for all Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

Breach of Contact

In the event Distributor or Company shall fail to perform or fulfill any obligation imposed on it herein, either party

may at its option terminate this contract forthwith. The waiver by either party of any breach of any provision hereof shall not be deemed to be a waiver of the breach of any other provision or provisions hereof or of any subsequent or continuing breach of such provision or provisions.

Assignability

This contract shall extend to and shall be binding upon the successors and assigns of Company and Distributor, provided, however, that no assignment hereof shall be made by Distributor or Company, or by operation of law, except to any leasehold mortgagee of Distributor, without the written consent of the other party hereto; provided however, that such consent shall not be withheld arbitrarily or capriciously by either party. This contract shall not be deemed an asset in, and at the option of either party, shall terminate in the event of any voluntary or involuntary receivership, bankruptcy or insolvency proceedings of Distributor.

Standard Stations, Inc.

Until further notice from Company, all payments to be made and notices to be given by or to Company hereunder shall be made or given by or to Standard Stations, Inc., as the case may be.

Definition of Area

Wherever the terms "Distributor's area" or "area in which Distributor's garage is located" or other like terminology is herein used, the same shall be construed to mean the City and County of San Francisco.

Dated: February 21, 1941.

Standard Oil Company of Calfornia, Company. By
W. G. Watson (signed), Attorney in fact. By

Union Square Garage Corporation, Distributor. By
Frank Y. McLaughlin, (signed), President. C.
H. Wall (signed) Secretary.

[fol. 2422] GOVERNMENT EXHIBIT 53-A

Amendment to Garage Management and Occupancy Agreement

This Agreement, made and entered into this 1st day of July, 1945, by and between Union Square Garage Corporation, hereinafter called "Union", and Union Square Garage Inc., hereinafter called "Operator",

Witnesseth:

Whereas, the parties hereto made and entered into a Garage Management and Occupancy Agreement dated December 31, 1941 (hereinafter referred to as "said Agreement"), with respect to the garage then being constructed in Union Square in San Francisco; and

Whereas, Operator entered into possession of said garage on September 14, 1942 and the term of said Agreement will continue until and expire on September 30, 1967; and

Whereas, the parties deem it in their best interests to modify and amend said Agreement in the respects hereinafter set forth;

Now, Therefore, in consideration of the premises and the respective covenants and agreements of the parties hereto, as hereinafter set forth, it is agreed as follows:

1. Payments and Annual Fixed Charges

The obligations of the parties pursuant to paragraph 7, subdivision (4), of said Agreement, in connection with payments required of Operator of the annual fixed charges of Union as therein provided, are hereby modified as follows:

(a) Commencing as of July 1, 1945, all future payments of annual fixed charges shall be computed for and on the [fol. 2423] basis of the fiscal years of the parties hereto which at present begin on July 1st of each year and end on June 30th of each succeeding year.

(b) In order to adjust the obligations of Operator under said Agreement which are to be performed in certain stated years of the term of said Agreement, as set forth therein, the third year of said term shall be deemed to be the period from October 1, 1944 to June 30, 1945, and the fourth and subsequent years of said term shall be deemed respectively to commence on July 1st, 1945, and July 1st of each subse-

quent year; all obligations of Operator to be performed in any year of the term of said Agreement shall be performed in the years of said term as modified hereby. The foregoing provisions of this paragraph (b) shall not affect the final expiration of the term of said Agreement as of September 30, 1967, and the period of said term after June 30, 1967 shall be deemed and treated as a fractional twenty-sixth year of said term.

(c) As interest at seven (7) per cent per annum after April 1, 1945 on the sum of $689,100.00, in lieu of interest at six (6) per cent per annum as provided in said Agreement has been included in the fixed charges of Union for said third year, Operator shall pay the increase of one (1) per cent for said period (i.e. $1722.75) to Union on or before September 30, 1945; provided that if the issuance of the debentures of Union hereafter to be issued but to be dated April 1, 1945 shall be abandoned, Operator shall be relieved of the obligation for such additional one (1) per cent for said period, and said amount, if theretofore paid, shall be returned to Operator.

(d) After July 1, 1945, annual fixed charges shall include interest at seven (7) per cent per annum to and including [fol. 2424] April 1, 1951 in lieu of six (6) per cent per annum as provided in said Agreement; provided that if the issuance of the debentures of Union hereafter to be issued but to be dated April 1, 1945 shall be abandoned, Operator shall be required only to pay dividends and/or interest as provided in said Agreement; provided further, that the interest ($12,062) accruing shall be included in fixed charges for the year beginning July 1, 1946 and shall be payable in three equal installments on July 15, August 15 and September 15, 1946, and not in the twelve installments otherwise payable in such year, and the interest ($12,062) accruing for April, May and June, 1947, shall be included in fixed charges for the year beginning July 1, 1947, and shall be payable in three equal installments on July 15, August 15, and September 15, 1947, and not in the twelve installments otherwise payable in such year.

(e) The fixed charges to be paid by Operator between July 1, 1967 and September 30, 1967 shall be estimated, computed and paid as follows: All taxes and surtaxes on, measured by or based upon earnings, receipts and/or income for

tax periods ending on or before September 30, 1967 and not theretofore fully included in fixed charges which have been paid by Operator shall be paid in full on or before September 30, 1967 (or as soon thereafter as the amount thereof is determined), and all such taxes and surtaxes as will accrue against or be paid or payable by Union on account of earnings, receipts or income for any fraction of a tax period beginning prior to September 30, 1967, and ending thereafter, shall be computed in the same manner as they would be computed if the payments to Union by Operator during said fractional tax period prior to September 30, 1967 constituted the entire income of Union for a full tax period and the amount found to be due on the basis of such computation shall be paid by Operator on September 30, 1967 (or as soon [fol. 2425] thereafter as the amount thereof is determined). Except as above provided the fixed charges to be paid by Operator for the period between July 1, 1967 and September 30, 1967 shall be computed, estimated and paid on the basis of three-twelfths of all such annual fixed charges as will accrue against or will be paid or payable by Union in the twelve months following July 1, 1967, and shall be paid in equal monthly installments on the first days of July, August and September, 1967.

(f) In the event payments by Operator at the rate of one-twelfth of Union's estimated annual fixed charges shall not be sufficient to enable Union to meet its obligations as they currently become payable in any year, Union may notify Operator and require Operator to pay more than one-twelfth per month of its estimated annual requirements in the earlier part or parts of such year, provided that the total obligations of Operator for an entire year shall not exceed the total amount of fixed charges required of Operator under said Agreement as amended hereby.

2. Security

Union acknowledges that it received as security for the performance of the obligations of Operator under said Agreement a bill of sale from Operator to Union dated August 31, 1942, covering all cash registers, interior and exterior advertising and directional signs; portable standards and chains for entrances, furniture, furnishings, sales counters, display cases, auxiliary cashier stations, loose or moveable garage equipment and tools, tele/autograph

for cashier stations, electric bulbs, fluorescent lamps, janitor's items, all materials and supplies for the garage business (exclusive of property intended for sale or for servicing of automobiles), and all other personal property [fol. 2426] (exclusive of property intended for sale or for servicing of automobiles) then located or installed in said garage. Operator agrees that it will at any time or from time to time upon request of Union publish notice of intention to mortgage and execute and deliver to Union a good and sufficient chattel mortgage effectively mortgaging to Union as security for the obligations of Operator under said Agreement and this amendment thereto, any and all such property then owned by or in the possession of Operator and intended for use or installation in said garage, including any hereafter acquired by Operator and located in or intended for use in said garage, all in such form and manner as may be satisfactory to Union.

3. Refunding Operations

Union shall have the right from time to time during the term of said Agreement to extend, refund and/or refinance its now existing indebtedness to Reconstruction Finance Corporation and/or its indebtedness evidenced by its debentures to be dated April 1, 1945 and for the issuance of which an application for a permit is now pending, and/or to issue debentures and/or bonds to pay, redeem or retire its outstanding preferred stock or any part thereof and to secure the whole or any part of any thereof by such mortgages, deeds of trust, pledges and/or assignments as Union may desire, provided only that Union shall not as a result thereof increase the annual or other payments required of Operator or require Operator to provide Union with funds for the payment or redemption of the principal thereof or for the interest thereon more rapidly or in greater aggregate amounts than those now required of Operator under said Agreement and this amendment thereto. All references in said Agreement or this amendment to Reconstruction Finance Corporation or to "said [fol. 2427] Mortgagee" shall apply to the Trustee under any and all indentures executed with respect to any indebtedness incurred by Union wholly or in part to extend, refund or refinance its now existing indebtedness to Reconstruction Finance Corporation.

4. Security Deposit

Operator agrees that it will establish and maintain during the term of said Agreement an account or accounts in a San Francisco bank or banks from time to time designated by Union, to constitute a trust fund for the protection of Union and as collateral security to secure the performance by Operator of its obligations under said Agreement, and this amendment thereto. Operator agrees to execute instructions in connection with such account or accounts satisfactory to the depositary and including, if requested by Union, a statement that said account constitutes collateral security to Union to secure the performance of such obligations and that withdrawals therefrom may only be made as hereinafter provided.

Within sixty days after the close of its taxable year ending June 30, 1946, Operator will deposit in said account or accounts a sum equal to its net income as hereinafter in this section defined for the fiscal year ending June 30, 1946. Within sixty days after the close of each fiscal year to and including the year ending June 30, 1950, Operator will deposit in such account or accounts all of its net income for the fiscal year immediately preceding the date of such deposit until the total deposits in such account or accounts shall equal $100,000.

If on June 30, 1950 the amounts on deposit in said account or accounts exceeds the sum of $50,000 plus any known liabilities of Union for which Operator is liable but for which provision has not been made in an estimate of or by payment of annual fixed charges, Operator may withdraw [fol. 2428] such excess. If the amount on deposit in said account or accounts on June 30, 1950 is less than $50,000, Operator shall thereafter continue to deposit amounts equal to its net income for each fiscal year thereafter within sixty days after the close of each fiscal year until the total amounts on deposit equal $50,000.

If at any time during the term of said Agreement the amount in said account or accounts shall be reduced below the amounts aforesaid on account of the application of any part thereof in the payment of any of the obligations of Operator under said Agreement or this amendment thereof, Operator will within sixty days after the close of each fiscal year thereafter deposit all of its net income for such

fiscal year until said accounts have been restored to the required amount.

During the period prior to June 30, 1950 Operator shall not be required to make any deposits in said account or accounts which would make the total amounts on deposit exceed $100,000. After June 30, 1950 Operator shall not be required to make any deposits in said account or accounts which would make the total amounts on deposit exceed $50,000.

After June 30, 1950 Operator may withdraw any interest which may accrue and be credited to said account or accounts provided such withdrawal of interest does not reduce the deposits in said account or accounts below the above required amounts.

Operator may with the written consent of Union invest all or any part of the funds in said account or accounts in bonds or other securities and from time to time change or sell such investments, provided that the securities are pledged in a manner satisfactory to Union as security for the performance of Operator's obligations under said Agreement and this amendment thereto, or proceeds thereof are redeposited in said account.

[fol. 2429] All withdrawals from such account or accounts shall be on checks or drafts bearing the signature of an officer of Operator and an officer of Union, provided that upon the termination or cancellation of said Agreement all deposits in said account or accounts shall be applied to the payment of any sums due from Operator to Union, and the balance, if any, shall be paid to Operator.

For the purposes of this Section 4 of this agreement the net income of Operator shall be computed in the manner defined in said Agreement as amended above, except that Operator shall be entitled to deduct from its gross income (1) all taxes, surtaxes (and interest and penalties thereon) on, measured by or based on its earnings, receipts or income, (2) such amounts as are reasonable to provide Operator with operating capital for the following fiscal year, (3) the amounts if any which are payable to Union under subdivision (5) of paragraph 7 of said Agreement, and (4) any expenditure for replacements, additions or improvements of or to said premises and/or the equipment used therein which have been made with the prior written consent of Union.

Operator agrees that at any time when said account or accounts are below the amounts hereinabove mentioned and required to be on deposit therein, Operator will not pay any dividend or make any other distribution upon any of its stock or pay to Andrew Pansini or Mary Pansini or to any stockholder or spouse of any stockholder the principal of any indebtedness to any such person for moneys heretofore or hereafter loaned to Operator.

5. Tax Deficiencies

If after the close of any year of the term of said Agreement, Union shall be liable for any deficiency in any taxes measured by or on its income, receipts or profits, and/or for [fol. 2430] penalties or interest thereon, Operator shall on written demand of Union pay all sums necessary to enable Union to pay such taxes, interest and/or penalties within the time permitted for the payment thereof; provided that Operator shall not be deemed in default in making such payments (a) until it shall have had a reasonable time, in view of the amount of such liability and its available assets or income, to pay such sum, or (b) if such sum can be paid by Operator only out of the security account mentioned in paragraph 5 above.

6. Excess Interest

In order to reimburse Operator for obligations hereinabove assumed for interest in excess of six (6) per cent per annum on the debentures to be issued by Union, no payment shall be due to Union from Operator under the provisions of subdivision (5) of paragraph 7 of said Agreement until Operator shall have recovered from sums which would otherwise be payable to Union under said subdivision an amount equal to the interest in excess of six (6) per cent per annum paid to Union by Operator on account of such debentures; provided, however, that such sums shall be payable as provided in said subdivision to the extent that Reconstruction Finance Corporation shall require the payment thereof for the establishment of reserves for the payment of the indebtedness of Union to Reconstruction Finance Corporation; provided further, that Union shall not by the use of reserves on hand at the time of any refinancing of its indebtedness increase the amounts which may be required under this paragraph to be paid for the

establishment of reserves for the payment of such indebtedness.

7. Debt Reduction

If, at the close of the year ending June 30, 1948, or on June 30th in any year thereafter, Operator is not in default under said Agreement, as amended by this agreement, and [fol. 2431] the aggregate amounts theretofore included in annual fixed charges under the provisions of clause (h) in the definition of fixed charges in paragraph 7 of said Agreement shall be $5,000 or more in excess of the aggregate par value or principal amount of preferred stock and/or long-term indebtedness theretofore paid, redeemed or retired by Union, Union shall within a reasonable time after the close of such year pay, redeem, or retire its outstanding preferred stock and/or long-term indebtedness in an amount substantially equal to the excess of such charges over such prior payments, redemptions and retirements; provided that Union shall not be so obligated if (i) it does not have funds available for use for such purposes, or (ii) such funds are applied by Union on the principal of the indebtedness to Reconstruction Finance Corporation, or (iii) reconstruction Finance Corporation will not consent to such use of such funds, or (iv) such use of such funds would, in the discretion of Union, be detrimental to it in view of its outstanding obligations, whether absolute or contingent and whether existing or reasonably contemplated; provided further, that Union may in its discretion decline to make such use of such funds, in which event it shall allow Operator a credit against fixed charges equal to the dividends or interest thereafter accruing on such stock and/or indebtedness as could have been paid, redeemed or retired with such funds.

8. Adjusted Obligations

In order to adjust and provide for certain obligations of the parties, it is agreed as follows:

(a) The parties acknowledge that they have prepared a statement of the annual fixed charges of Union to constitute an itemized statement for the first three years of the term of said Agreement, as amended above, that said statement has been prepared on the basis of figures submitted by Union from its records and on the basis of said Agreement, [fol. 2432] as amended by this agreement, and that it has

been found that the total payments made by Operator during said three years were $1,378.10 in excess of the total payments required of Operator under said Agreement, as so amended. It is mutually agreed that the determination of said sum of $1,378.10 by said statement and by this agreement is without prejudice to changes if any error therein be hereafter discovered. Subject to the correction of any such error, Operator shall be allowed credit for such overpayment in the manner provided below.

(b) Union shall credit Operator in the manner provided below with the sum of $6,712.78 on account of certain construction costs incurred by Operator and which the parties have agreed were properly the obligation of Union under said Agreement.

(c) The credits mentioned in clauses (a) and (b) shall be allowed to and taken by Operator in two equal monthly installments in May and June, 1946, against the payments on account of annual fixed charges otherwise payable in said months.

(d) In connection with the provisions of clause (d) in the definition of "fixed charges" in paragraph 7 of said Agreement, the parties acknowledge that Operator has heretofore paid to Union all of the dividends accruing on the preferred stock of Union for the first, second and third years of the term of said Agreement except for the additional sum of $8,038 on account of dividends which accrued but were not charged to Operator in the first year of said term pursuant to the limitations of clause (d) of said paragraph 7. The maximum obligation of Operator for dividends and/or interest in the fourth and fifth years of the term of said Agreement shall be the [fol. 2433] amount hereinabove stated in clause (d) of section 1 of this agreement, or, if the debentures therein mentioned shall not be issued, dividends in the amount of $41,346. The maximum amounts mentioned in said clause (d) of the definition of "fixed charges" in paragraph 7 of said Agreement for the fourth and fifth years of said term are hereby stricken therefrom. Operator shall pay to Union said balance of $8,038 at the times and in the manner hereinafter provided in clause (g).

(e) There shall be cancelled and stricken from clause (ii) of the definition of "fixed charges" in paragraph 7 of said

Agreement, the obligation of Operator for the fourth year in the amount of $1,500 and the obligation of Operator in the fifth year in the amount of $6,500. In lieu thereof, Operator shall pay to Union the sum of $8,000 in lieu of the payments otherwise provided in said paragraph at the times and in the manner hereinafter provided in clause (g).

(f) The parties acknowledge that Union has incurred and will incur and pay expenses for legal fees, trustee's fees, printing and similar purposes in connection with the issuance of the debentures to be dated April 1, 1945. When the amount of such fees and other expenses in connection with the issuance of such debentures is determined Union shall give Operator written notice of the amount thereof and such amount shall be payable by Operator to Union at the times and in the manner hereinafter provided in clause (g). There shall be included in such expenses to be paid by Operator only such premiums for the calling or redemption of preferred stock or for costs of soliciting the deposit or exchange of stock as may have been approved in writing by Operator.

(g) The amounts hereinabove agreed to be paid by Operator under clauses (d), (e) and (f) next above shall be paid by Operator to Union, in addition to all other pay-[fol. 2434] ments required of Operator, in thirty-six (36) equal monthly installments beginning on the 15th day of July, 1948 and ending with the 15th day of June, 1951.

9. Approvals

This agreement shall not be effective until it shall have have been approved by Reconstruction Finance Corporation

In witness whereof, the parties hereto have executed these presents by their officers thereunto duly authorized the day and year first above written.

Union Square Garage Corporation, by C. H. Wall, President.

Attest: M. McCaba, Secretary.

Union Square Garage, Inc., by Andrew Pansini, President.

Attest: L. R. Biltronn, Secretary.

[fol. 2435] Resolved that the corporate officers be and they hereby are authorized and directed to enter into a products contract with Standard Oil Company of California no less favorable than that proposed by the company's bid dated January 2, 1941, said contract to contain, however, if it should be possible to negotiate the same, a clause stipulating that the price charged to this corporation should be no greater than that charged to any other buyer for delivery of products of a like grade, quantity and quality.

I, Richard E. Guggenhime, hereby certify that I am the duly elected, qualified, and acting Assistant Secretary of Union Square Garage Corporation; that the foregoing is a true, correct, and exact copy of a resolution duly adopted at a special meeting of the Board of Directors of Union Square Garage Corporation on January 6, 1941, duly and regularly called in accordance with law and the by-laws, at which a quorum was present and voting, which resolution has not been amended, modified, or rescinded.

Dated: January 13, 1941.

Richard E. Guggenhime, Assistant Secretary of Union Square Garage Corporation.

[fol. 2436] GARAGE MANAGEMENT AND OCCUPANCY AGREEMENT

This agreement made and entered into this 31st day of December, 1941, by and between Union Square Garage Corporation, a corporation organized and existing under the laws of the State of California, hereinafter called "Union", and Union Square Garage, Inc., a corporation organized and existing under the laws of the State of — — hereinafter called "Operator",

Witnesseth:

Whereas, Union is the lessee of the property hereinafter described, or part thereof, under lease dated March 18, 1941, by and between the City and County of San Francisco and Union, and recorded in the office of the County Recorder of the City and County of San Francisco in Volume 3730 of Official Records, page 382, the said lease being sometimes hereinafter called "City Lease"; and

Whereas, the said lease and leasehold estate and the term thereby created, and all of the other property, real and personal, hereinafter described is subject to that certain mortgage dated March 18, 1941, executed by Union to Reconstruction Finance Corporation and recorded in the office of the County Recorder of the City and County of San Francisco in Volume 3719 of Official Records, page 433, the said Reconstruction Finance Corporation being sometimes hereinafter called "Mortgagee", and said mortgage being sometimes hereinafter called "said Mortgage"; and

Whereas, Union has made and entered into an agreement with Standard Oil Company of California dated February 21, 1941 providing for the purchase and sale of petroleum [fol. 2437] products and other goods in the premises described below herein, said agreement being sometimes hereinafter called "Distributor Agreement"; and

Whereas, the parties hereto desire to provide for the management and occupancy by Operator of the premises and property described in said lease and described below herein,

Now, therefore, the parties hereto agree as follows:

For and in consideration of the covenants and agreements of Operator herein contained and the compliance by Operator with the terms, provisions and conditions hereinafter set forth, Union hereby gives, grants, lets and demises unto Operator and Operator undertakes and hires from Union, subject to the terms, provisions and conditions herein contained, the management and control of the premises and property described below herein, and the premises and property described below herein, for the term and upon the conditions hereinafter stated, to wit:

1. Property and Premises

The premises and property subject to this agreement are the following: All the right, title and interest of Union in and to the property described in said City Lease, being the subsurface of that certain park in the City and County of San Francisco commonly known and designated as "Union Square" and more particularly described as follows, to wit:

> Commencing at the point of intersection of the southerly line of Post Street and the easterly line of Powell Street; running thence easterly and along said

line of Post Street four hundred twelve (412) feet six (6) inches to the westerly line of Stockton Street; thence at a right angle southerly and along said line of Stockton Street two hundred seventy-five (275) feet to the northerly line of Geary Street; thence at a right [fol. 2438] angle westerly and along said line of Geary Street four hundred twelve (412) feet six (6) inches to the easterly line of Powell Street; thence at a right angle northerly and along said line of Powell Street two hundred seventy-five (275) feet to the point of commencement.

Being known as Union Square,

together with all the right, title and interest of Union in and to the garage to be and being constructed by Union in accordance with the provisions of said City Lease and in and to any and all buildings, improvements and appurtenances now or at any time hereafter constructed or placed in or upon the premises subject to said City Lease, or any part thereof, including all partitions, dynamos, engines, boilers, furnaces, fire prevention and extinguishing apparatus, heating, plumbing, ventilating, gas and electric light fixtures, elevators, and fixed machinery, fixed appliances and fixed equipment, and all and singular the tenements, hereditaments, easements, appendages and appurtenances to said estate and property belonging or in anywise appertaining, and all other tangible property, real, personal or mixed, of whatsoever nature now owned or hereafter acquired by Union or Operator and situate and intended for use upon said premises. The foregoing, or such part thereof as may be appropriate in the context, shall be included within the meaning of the words "said premises" as used in this agreement. Upon the entry of Operator into possession of said premises, the parties will prepare and execute an instrument supplemental to this agreement identifying and describing specifically and in detail the property then covered hereby. Operator will install and supply for its own account and at its own expense such of the following items of garage equipment as Operator desires to use: Cash registers; interior and exterior advertising and direc- [fol. 2439] tional signs, portable standards and chains for entrances; furniture; furnishings; sales counters; display cases, auxiliary cashier stations; loose or movable garage equipment and tools; teleautograph for cashier stations;

electric bulbs; fluorescent lamps; usual janitor's items; all materials and supplies for the business and for the operation of the building. Except for the materials to be supplied by Operator, Union will equip said garage and install therein the fixtures included in its present plans and specifications, but this agreement shall be operative notwithstanding Union or Operator may be unable to furnish or install all thereof so long as sufficient shall have been installed to enable Operator to conduct a garage business in said premises substantially as now contemplated by Union.

2. Term

The term for which Operator shall manage and occupy the premises as herein provided shall commence when Operator shall have entered into possession of said premises and continue for twenty-five (25) years thereafter and, if Operator shall not have entered into possession as of the first day of a calendar month, in addition until the last day of the calendar month in which the twenty-fifth year shall expire. Operator shall be deemed to have entered into possession of said premises when said premises shall be completed and equipped as provided in paragraph 1 above and ready for operation for the purposes set forth in this agreement, and when written notice thereof shall have been received by Operator from Union, or whenever Operator shall have actually entered into the exclusive possession of said premises, whichever is earlier. Upon the entry by Operator into possession, the parties will prepare and execute an instrument supplemental to this agreement specifying the date of the commencement and the date of [fol. 2440] termination of said term in accordance with the foregoing. If Operator shall not have been given possession as set forth herein prior to the first day of January 1st, 1943, this agreement shall cease and terminate at the option of either party hereto, but Union shall not be liable in any manner to Operator on account thereof, except to return the payment under clause (2) in paragraph 7.

3. Purpose

Said premises shall be used solely for the operation of a public automobile garage and parking station and for the sale of such commodities and services therein as are or may in the future be customarily sold or rendered in a

public garage, and for other lawful purposes in connection therewith.

Operator agrees to manage, operate and conduct in said premises such a public automobile garage and parking station and to dispense such commodities and services and conduct such other lawful operations therein continuously and at all times throughout the term of this agreement, to the fullest extent possible, consistent with the demand for such facilities, commodities and services and will at no time, irrespective of such demand, or the absence thereof, permit said premises to be vacant or unoccupied or used for any purpose other than as aforesaid.

4. City Lease

Operator accepts said premises and this agreement subject to all the terms, provisions and conditions of said City Lease and agrees not to do or permit any act or thing to be done and not to fail to do any act or thing in respect of the use and occupancy of said premises which in either case would constitute a violation or breach of any of the terms, covenants or conditions thereof, or subject Union to any liability.

[fol. 2441] 5. Mortgage

Operator accepts said premises and this agreement subject to said Mortgage and agrees not to do or permit any act or thing to be done and not to fail to do any act or thing in the respect of the use and occupancy of said premises which in either case would constitute a violation or breach of any of the terms, covenants or conditions thereof, or subject Union to any liability. While said Mortgage is undischarged, any decisions or directions which said Mortgagee is entitled hereunder to make or give to Operator shall supersede any conflicting decisions or directions made or given by Union. Said Mortgagee shall have the right as a third party beneficiary under this agreement to enforce all of the provisions of this agreement for its benefit.

6. Distributor Agreement

Operator accepts said premises subject to said Distributor Agreement, and agrees with Union to perform all of the covenants and obligations of Union under said agreement or under any agreement substituted therefor by Union and

Standard Oil Company of California, and to comply on behalf of Union with all conditions thereof, in each case so long as said Distributor Agreement or substitute agreement shall remain in force during the term of this agreement.

7. Payments

In consideration of the rights herein granted to Operator, Operator will pay to the Union the sums and at the times following:

(1) Twenty-five Thousand Dollars ($25,000) forthwith after the execution of this agreement, as the purchase price of two hundred and fifty (250) shares of the now authorized six per cent (6%) cumulative preferred stock of Union, in accordance with outstanding permits. Union will promptly issue, deliver and sell said stock to Operator, subject to and [fol. 2442] on the terms authorized by said permits. The purchase and sale of said stock shall constitute a separate transaction, distinct from the remaining provisions of this agreement. This provision is subject to obtaining necessary permits. Bonded or long-term indebtedness mentioned in paragraph 20 below may be substituted by Union.

(2) Five Thousand Dollars ($5,000) on or before December 31, 1941.

(3) Ten Thousand Dollars ($10,000) on or before the 15th day after Operator shall have entered into possession as hereinabove provided, or such lesser amount as Union in its discretion deems necessary to cover its expenses during the first full twelve (12) calendar months, plus any additional fractional portion of a month, of the term defined by paragraph 2 above.

(4) A sum equivalent to the annual fixed charges of Union for and during the full term hereof in accordance with itemized statements to be presented annually by Union to Operator. For the purposes of this clause, the first year shall include the first full twelve calendar months of the term hereinabove defined, plus any preceding fractional portion of a month of the term hereof as hereinabove defined, and each subsequent year shall constitute a period of twelve calendar months, the last of which shall coincide with the expiration of said term; provided, however, that there shall be excluded in the computation of the payments for the first year and fractional period

of said term and in the computation of the payments for the balance of the term of this agreement, all such charges attributable to the period prior to 12:01 A.M. of the sixteenth calendar day after Operator shall have entered into possession as aforesaid. An estimated amount as set forth in annual statements of estimated [fol. 2443] expenses, which shall be presented to Operator by Union at least thirty (30) days prior to the commencement of the ensuing year, shall be payable by Operator in twelve equal monthly payments in advance on the first day of each calendar month during the period covered by said statement; provided that, for the first year, the monthly payments shall each be the sum of Fifteen Thousand Dollars ($15,000) except that the first payment on the first day of the first calendar month shall be adjusted and be increased or decreased, as the case may be, to give effect to the aforesaid period of fifteen (15) days during which such charges are not to be paid by Operator and to any fractional portion of a month (in excess of twelve (12) full months) for which payments may accrue after taking said fifteen-day period into account; provided, further, that the moneys paid under clauses "(2)" and "(3)" above shall be credited and applied against the first payment or payments due under this clause for said first year. If the total payments made during any one year, in accordance with the statements rendered, shall exceed the amount finally found due for that year (determined from said first mentioned itemized statements to be furnished to Operator), then the excess shall be credited on the next accruing payment or payments required under this clause in the next year; if said total payments made during any one year shall be less than the amount so finally found due for that year, the deficiency shall be paid by Operator within thirty (30) days from the receipt of said first mentioned itemized statement for such year.

(5) One-half (½) of the annual net income of Operator, as hereinbelow defined, in excess of Twenty-five Thousand Dollars ($25,000), for each year it shall exceed Twenty-five [fol. 2444] Thousand Dollars ($25,000) payable annually promptly after the determination of the amount thereof, and in any event within sixty (60) days after the close of each twelve (12) months of the term hereof; provided, if Operator shall have entered into possession as aforesaid

more than fifteen (15) days prior to the first day of the next following calendar month, that the first year shall also include the preceding fractional portion of a month in excess of fifteen (15) days: provided, further, that no payment shall be due for any year or years after the first year until Operator shall have had a net income calculated as hereinafter defined in an amount cumulatively of Five Thousand Dollars ($5,000) per annum for the prior year or years, including the reimbursement to Operator of any and all losses in the prior year or years, such losses to be calculated under and in accordance with the definition of net income hereinbelow.

Fixed Charges: The words "fixed charges" as used herein, shall mean the sum of Ten Thousand Dollars ($10,000), plus the sum of the following:

(a) Interest on all indebtedness of Union now or hereafter existing to said Mortgagee, whether or not secured by said Mortgage or otherwise, or to any other person or persons if incurred in respect of such other person or persons in the maintenance, repair or reconstruction of said premises;

(b) Payments required on the principal of said indebtedness to said Mortgagee, and payments required on the principal of any other indebtedness to any other person or persons if such indebtedness in respect of such other person or persons was incurred in connection with the maintenance, repair or reconstruction of said premises;

[fol. 2445] (c) Payments to be applied by Union to its agreement with Reconstruction Finance Corporation to deposit net earnings to a total of Sixty-six Thousand Three Hundred Dollars ($66,300), and payments to be applied by Union from time to time thereafter to replete and maintain said fund at a minimum of Sixty-six Thousand Three Hundred Dollars ($66,300). The sum of Five Thousand Five Hundred and Twenty-Five Dollars ($5,525) shall be paid on the first day of each calendar month commencing with the first day of the first calendar month of the term of this agreement and ending with the first day of the twelfth calendar month thereof. If after said fund shall have been created the same shall be depleted from any cause, then Operator

shall pay the sum of Five Thousand Five Hundred and Twenty-five Dollars ($5,525), or such lesser sum as shall be needed, on the first day of each calendar month after receipt by Operator of written notice of the depletion of said fund until said fund shall be restored to a minimum of Sixty-six Thousand Three Hundred Dollars ($66,300); provided that, if such payments shall not have repleted said fund to said minimum amount by the end of the calendar year in which it shall have been depleted, all of the net income of Operator, as hereinafter defined, during Union's preceding fiscal year in excess of the payments so accruing at the rate of Five Thousand Five Hundred and Twenty-five Dollars ($5,525) per month shall be paid on account of the repletion and maintenance of said fund. Whenever said fund is sufficient to discharge the balance of principal and interest payable to the Reconstruction Finance Corporation, Union shall apply the same in payment [fol. 2446] thereof. Any interest allowed by Reconstruction Finance Corporation on account of the establishment of a deposit with it by Union out of payments mentioned in this paragraph shall belong solely to Union;

(d) Dividends or interest, at six per cent (6%) per annum in each case, on all outstanding preferred stock of Union now or hereafter outstanding, and/or on bonded or long-term indebtedness incurred by Union to redeem or in exchange for preferred stock under paragraph "20" below; provided, that, for the first five (5) years of the term hereof, the amount required of Operator shall not exceed the following maximum sums, respectively: $17,000, $50,000, $49,000, $49,000 and $44,000.

(e) Rent and any other sums payable under said City Lease;

(f) All insurance premiums on such insurance as Union in its uncontrolled discretion shall carry;

(g) All taxes of every kind and character and whether or not now known or hereafter imposed, including, without limiting the generality of the foregoing, all general or special taxes on real or personal

property, assessments, governmental charges, imposed against property, all kinds of privileges or license taxes or fees (whether for revenue or regulation), all earnings, receipts and income taxes, all surtaxes, all excess or undistributed profits taxes, and all other taxes measured by or on income or receipts, all stamp or excise taxes, and all sales and use taxes, all capital stock taxes, all capital taxes, and all franchise fees and taxes; also all interest and/or penalties on any [fol. 2447] thereof due to the nonpayment thereof, whether or not payment or the amount or validity thereof be contested;

(h) All sums necessary for the payment, redemption or retirement, as the case may be, of the outstanding cumulative preferred stock of Union or of the bonded or long-term indebtedness incurred by Union to redeem or in exchange for preferred stock under paragraph "20" below (which indebtedness may be made subject to payment, retirement or redemption in accordance with the following schedule) in the following indicated years of the term of this agreement, and in the amounts for each respective year, following:

1	$ none	9	$7,500.00	17	$ 5,500.00
2	1,000.00	10	7,500.00	18	5,000.00
3	2,000.00	11	7,000.00	19	69,000.00
4	1,500.00	12	7,500.00	20	74,000.00
5	6,500.00	13	6,500.00	21	80,000.00
6	8,000.00	14	6,000.00	22	86,000.00
7	8,000.00	15	6,000.00	23	91,000.00
8	8,000.00	16	5,500.00	24	98,000.00
				25	103,000.00

(i) If during the first year of the term hereof, the gross income (and receipts) of Operator, after deducting operating expenses mentioned in paragraphs (a), (b), (c), (d), (e) and (g) of the hereinbelow definition of "net income", shall not be sufficient to permit payment in full of all expenses described in paragraphs (a) to (h), inclusive, in this definition of "fixed charges", the total payments required of Operator during said first year shall be reduced by the amount

said gross income, less said operating expenses, shall be less than the sum of all payments required, under said eight paragraphs in this definition of fixed charges; provided, that the total of such payments shall not be reduced below the total payable under said clauses [fol. 2448] (a), (b), (d), (e), (f), (g), and (h); provided, further, that the amount of such deduction, if any, shall be made up during the second year of the term hereof in twelve equal monthly installments, irrespective of Operator's income during such second year.

All decisions of Union in connection with insurance premiums and taxes or in connection with the contesting thereof, regardless of the actual validity or the actual amount of the same, and any compromise thereof by Union, shall be binding upon Operator, but Union, if requested so to do by Operator, will have its tax adviser or will itself consult with Operator's tax adviser when making the annual estimate of its tax obligations and in paying or compromising any disputed or questionable tax items.

Net Income: The words "net income" of Operator as used herein shall mean the gross income and receipts of Operator from all sources whatsoever (exclusive only of loans and capital contributions) minus, to the extent such items would be allowed or allowable under the now existing United States Income Tax Laws and Regulations, the following:

(a) Salaries or wages payable for services actually rendered in or about the said premises or for the business conducted therein, excluding the salaries, wages or compensation of any person who is an officer of Operator;

(b) Salaries or compensation of the officers of Operator paid in good faith; provided that all salaries or compensation to be paid or to be payable to any stockholder, or spouse, parent or descendant of any stockholder, of Operator, shall be subject to the prior written approval of Union, and to the extent not so [fol. 2449] approved shall be excluded;

(c) Cost to Operator of maintenance, repair, reconstruction or replacement of the said premises or parts

thereof, exclusive of any such costs for which insurance affords reimbursement and of any such costs arising out of the negligence of Operator or out of the breach of this agreement by Operator;

(d) Bad debts, interest on funds employed for any purpose of the business conducted in said premises, property taxes on property used in or for said business, license fees in connection with said business, capital stock taxes; sales and use taxes, bona fide contributions to established charitable organizations, and losses caused by fire, storm, casualty or theft, excluding losses due to the negligence of Operator or to any breach of this agreement by Operator;

(e) Actual fees and charges for attorneys, accountants, auditors and tax advisers, and similar professional or expert services, excluding fees for such services due to the negligence of Operator or to any breach of this agreement by Operator;

(f) Payments required of Operator under clauses "(2)", "(3)" and "(4)" in this paragraph "7";

(g) All actual costs of, or incidental to, actual operations on said premises, excluding any items excluded above in clauses "(a)" to "(f)" inclusive, and excluding depreciation and amortization of investments or costs, in any form.

Salary Limitation: So long as the indebtedness secured by said Mortgage to the Reconstruction Finance Corporation is unpaid, Operator will not without the prior written consent of said Mortgagee pay any person compensation, [fol. 2450] as defined in Reconstruction Finance Corporation Form L-109 (c), as revised March 19, 1941, at a rate in excess of Three Thousand Six Hundred Dollars ($3,600) per annum, or pay or agree to pay or permit any company or firm controlled by Operator to pay or agree to pay to any employee or person any compensation deemed unreasonable by said Mortgagee. Operator will from time to time at the request of said Mortgagee furnish a schedule prepared in accordance with the instructions on said form herein mentioned showing all compensation then being paid to employees of Operator.

Fiscal Year: To facilitate accounting between Union and said Mortgagee and Operator, Operator agrees to establish for income tax purposes a fiscal year corresponding to the fiscal year of Union, which fiscal year now established by Union commences with July first and ends with June 30th of each calendar year. Should Union at any time deem it advisable to establish a fiscal year expiring on December 31st of each calendar year or expiring as of the last day of the calendar month as of which the term of this agreement shall expire, Union may do so, and in that event Operator will use its best efforts to obtain the consent of the tax authorities to the change of its own fiscal year to the same fiscal year as that of Union and upon obtaining such approval Operator will change its fiscal year to correspond with that established by Union; the rights herein conferred upon Union may be exercised from time to time. In the event of any change in such fiscal year, then all computations required by any provision of this agreement on account of accruing taxes, expenses and other obligations or payments then outstanding shall be computed pro rata upon the occasion of such change and in the last year of the term of this agreement, as the case may be.

[fol. 2451] 8. Use, Maintenance, and Condition of Premises

Operator, at its own cost and expense in each respect, will: maintain and keep said premises and every part thereof, both inside and out and all additions thereto, in good and thorough repair, working order and condition and free from waste or nuisance of any kind; operate the same in an efficient and first-class manner as a first-class public garage and parking station throughout the term of this agreement; neither vacate nor abandon said premises during the term hereof; make from time to time all repairs, renewals, replacements, improvements, betterments, and additions which may be needful or proper to preserve and maintain the said premises and every part thereof and the value and competitive efficiency thereof or which may be requested of Union under said Mortgage by said Mortgagee; neither commit nor suffer to be committed waste upon said premises; comply with and abide by all laws, ordinances and regulations now or hereafter in force, and all covenants, conditions and restrictions of

any kind affecting the said premises or the maintenance, repair, renewal, replacement, alteration, improvement or use thereof; replace any and all parts of said premises which may be worn out, lost or destroyed; neither alter nor destroy nor remove any of the buildings, improvements or property subject hereto or permit the same to be altered, destroyed or removed; complete in good and workmanlike manner the construction, renovation or remodeling of any part of said premises that may be undertaken by it hereunder; pay when due all claims for labor performed and material furnished in or about said premises; adopt and put into effect any suggestions or requirements made by said Mortgagee in respect of the management of said premises and do any other act or acts, all in a timely and proper manner, which from the character or use of said [fol. 2452] premises may be reasonably necessary to protect and preserve the same; make no changes or alterations in or repairs of or to any of the structural portions of said premises, and make no additions in or to said premises, in either case without first having obtained the written consent of Union; if access to the roof of said premises through the surface of the park above said roof shall be desired, first notify Union of and obtain its written consent to the work to be done and restore the park surface to its previous condition in the event of removal of any part thereof for the purpose of effecting repairs; if any equipment, machinery or other property subject hereto shall become obsolete or worn out, replace the same with other property of the same or greater utility value and neither sell nor dispose of any such obsolete or worn out equipment, machinery or property without the prior written consent of Union; promptly upon acquiring any property which, if acquired by Union, would be subject to the lien of said Mortgage, notify said Mortgagee and Union of such acquisition and state the nature, cost, quantity and amount of such property so acquired, it being recognized that all such property shall forthwith become subject to the lien of said Mortgage and belong to Union. All replacements, renewals, improvements, additions and alterations of or to said premises or any part thereof, including all personal property (exclusive of property intended for sale or for servicing of automobiles) at any time installed therein for the conduct of said garage and parking sta

tion, shall become at once a part of said premises and belong to Union. Union shall have no obligation in any of the foregoing respects. The obligations of Operator under this paragraph are subject to the provisions of paragraph 26 below.

9. Management

[fol. 2453] The management and personnel engaged in the operation of said premises and said garage business shall at all times be satisfactory to Union and to said Mortgagee, and if either Union or said Mortgagee shall notify Operator that such management or any of the personnel is or are not satisfactory to it, Operator will within thirty (30) days from the forwarding of such notice to Operator make changes so that such management and/or personnel shall be satisfactory to Union and to said Mortgagee.

10. Rates

The rate structure of Operator for parking charges until the end of the first twelve (12) full calendar months in which Operator shall have been in possession of said premises shall be as follows: For one hour, $0.25; for two hours, $0.35; for three hours, $0.45; for in excess of three hours and up to twelve hours, $0.50; for up to twelve hours, with the privilege of more than one entrance and one exit, $0.75; for in excess of twelve hours and up to twenty-four hours, $0.75; and for monthly contracts, including daily dusting service, $12.50. From time to time during the term hereof Operator may make special rate concessions to officers, merchants and business establishments, and for evenings, Sundays and holidays. After the end of said first twelve full calendar months and at the end of every twelve months thereafter such rate structure for parking charges shall be subject to revision by mutual consent of Operator and the Board of Directors of Union; provided, if they are unable to agree, that the rate shall be, within the limits requested by Operator and Union, such as may be approved by said Mortgagee, or, if said Mortgagee shall decline to act or if said Mortgage shall have been discharged, such as shall be determined by arbitration as next hereinafter provided; provided further, however, that in no event shall the rate structure for one hour, two hours, [fol. 2454] and three hours be less than $0.15, $0.25 and

$0.35 respectively. Should arbitration be required under the foregoing sentence, then either party may by written notice delivered to the other specify an arbitrator to act on its behalf; all times herein mentioned shall be computed from the date of delivery of said first notice; within ten (10) days the other party shall designate its arbitrator by written notice delivered to the other; the two arbitrators shall promptly and in any event within a total of twenty (20) days (from delivery of said original notice) select a third arbitrator, and the three arbitrators so selected shall promptly, and in any event within a total of thirty-five (35) days (from delivery of said original notice), hear the parties and thereafter promptly and in any event within forty (40) days (from delivery of said original notice), determine such rates for the following year; the decision of any two of said arbitrators shall be final and be binding upon both Union and Operator. Each party shall bear its own expenses and the expenses of its arbitrator; the compensation of the third arbitrator and the expenses of the three arbitrators shall be borne by Union and Operator in equal shares.

11. Utilities

Operator will pay for all gas, electricity, water, steam and other utility services furnished to or used in connection with said premises and the operation thereof.

12. Indemnity

Operator accepts said premises in the condition which they shall be at the time of its entry therein and assumes all risks and hazards in connection therewith and the occupation and operation thereof, and waives any and all claims for compensation for, and agrees to indemnify and save harmless Union and its directors, officers, agents and employees from, claims and liability for injury to or death [fol. 2455] of any and all persons whomsoever, including the directors, officers, agents, employees, and contractors of Operator and any of the directors, officers, agents and employees of such contractors, and loss or damage to or loss of use of property whatsoever, including that of Operator or of the directors, officers, agents, employees or contractors of Operator or of the directors, officers, agents or employees of such contractors, by reason of any defect,

deficiency or impairment of said premises now existing or hereafter to arise or by reason of any work heretofore or hereafter done on, in or about said premises by Union. Operator will indemnify and save harmless Union, its directors, officers, agents and employees, and the City and County of San Francisco and the Board of Park Commissioners thereof and their respective officers, agents and employees, from and against any and all claims, liabilities, losses and expenses arising or claimed to arise from injury to or death of persons whomsoever, or loss of or damage to or loss of use of property whatsoever, in either case occasioned or claimed to have been occasioned in whole or in part by the acts or omissions of Operator or its agents, employees or contractors or resulting from or occasioned or claimed to have resulted from or been occasioned by the lack of maintenance or repair of said premises or improvements or the occupation or operation of the said premises by Operator, or the failure of Operator to eliminate dangerous conditions known to or discovered by Operator, and in each case, irrespective of negligence; and Operator shall reimburse Union for the cost of such public liability and property damage insurance as Union shall elect to carry, including insurance inuring to the benefit of all parties mentioned in this paragraph, and in such reasonable amounts as may be determined by Union [fol. 2456] or by said Board of Park Commissioners in directions to Union under said City Lease. Operator hereby expressly releases and discharges Union and its directors, officers, agents and employees from any and all damages, claims, actions and causes of action arising from any of the causes aforesaid.

13. Judgments and Awards

Operator disclaims any interest in and releases to Union all judgments, decrees and awards for injury or damage to, or for the condemnation of, the said premises or any part thereof.

14. Insurance and Proceeds

Operator will not do or permit to be done in or about said premises or with respect to its business conducted therein any act or thing that would prevent Union from obtaining or maintaining, and will do in such respects any and all

things necessary to enable Union to obtain and maintain, insurance against such risks to any and all of said premises and the business conducted therein, and in such companies and in such amounts as shall be satisfactory to or required by said Mortgagee, the policies for which shall in form be satisfactory to said Mortgagee, or such reasonable and customary insurance, including fire, explosion, earthquake and public liability insurance, as Union may at any time desire to carry. Except for using the premises for the purposes agreed above and in conformity with the foregoing sentence, Operator will not make or permit any use of said premises, nor do or omit to do any act or thing in or about said premises, which would increase the then existing rate or rates of insurance upon said premises or cause the cancellation, forfeiture or suspension of any such insurance policy as aforesaid or the coverage afforded thereby. Operator will bear all costs and expenses of complying with the provisions of this paragraph and of complying with any and all requirements pertaining to [fol. 2457] said premises or its business conducted therein of any insurance organization or company necessary for the maintenance of such insurance as aforesaid. Operator disclaims any interest in and releases to Union any and all such insurance and the proceeds thereof, save only such as may be specifically carried and be specifically payable to indemnify Operator against loss to itself. In the event of loss or damage to any premises or property in the possession or custody of Operator and which is covered by insurance, Operator will immediately give notice by mail to said Mortgagee of such loss or damage and also will promptly notify Union of such loss or damage. The obligations of Operator under this paragraph for compliance with the terms of any insurance policy shall be conditional upon Operator having been notified from time to time of the existence of such policy and the terms thereof. If, in making any payment to Union, Operator shall have included an amount based upon an insurance premium, Operator disclaims and releases to Union any interest in any unearned premium which may be payable upon the cancellation of any such policy.

If requested by Operator so to do and if the same can be done without prejudice or expense to Union, Union will include Operator and its officers and employees as insured

in any policies of insurance maintained by Union; provided that Operator shall pay Union the amount of all premiums or increase in premiums occasioned thereby; provided further, that Union shall have no such obligation unless provisions, wholly satisfactory to Union, may and shall be attached to or included in the policy to the effect that such insurance shall not be prejudiced and shall extend in favor of all other insured named therein notwithstanding that [fol. 2458] the same may be avoided, suspended, cancelled or rendered inoperative as to Operator on account of the, or any of the, representations, warranties, acts, omissions or neglect of Operator or its directors, officers, employees, agents or contractors.

15. Adverse Claims and Liens

Operator will not at any time create, or suffer to be created, any debt, lien or charge which will or might be prior to the lien of said Mortgage and will not do in, upon or about said premises, or any part thereof, anything that might in anywise weaken, diminish or impair the value of said Mortgage or the lien thereof. Operator will at all times keep the said premises, including its interest therein, free and clear of any and all mechanic's, attachment and execution liens, and free and clear of any assignment or transfer in the nature of a lien or mortgage or like hypothecation. Operator will promptly pay or settle or cause to be removed all claims against any of the said premises which affect, or which might affect, the rights of said Mortgagee or of Union; will appear in and defend any action or proceeding purporting to affect said Mortgage or the interest of Union or the interest, rights or powers of said Mortgagee or of Union, and will pay all costs and expenses, including costs of evidence of title and attorneys fees in a reasonable sum, in any such action or proceeding in which said Mortgagee or Union may appear. Either said Mortgagee or Union, or both, may appear in and defend any action or proceeding purporting to affect the security of said Mortgage or the interest of Union or the rights or powers of said Mortgagee or of Union and either may pay, purchase, contest or compromise any encumbrance, charge or lien suffered or created by Operator which in the judgment of said Mortgagee or of Union appears to be prior or [fol. 2459] superior to said Mortgage or to the interests

of Union; and in exercising any such powers, either may pay all necessary expenses and employ counsel and pay his reasonable fees; and Operator will reimburse said Mortgagee direct, or Union, as the case may be, for any and all sums expended by said Mortgagee or by Union in connection with any of the foregoing matters, with interest at the rate of seven per cent (7%) per annum. Union may enter said premises at any and all times and post and maintain therein notices of non-responsibility and all other appropriate notices, and Operator will use its best efforts to preserve and keep posted all such notices.

16. Taxes

Operator will pay promptly before the maturity thereof any and all taxes which shall or might be a lien upon the interest of Operator in said premises or upon any property belonging to Operator and used in said premises.

In respect of any and all taxes (general or special), assessments or governmental charges imposed upon said premises (all of which are included within the word "taxes" as used in this agreement) which shall be payable by Operator to Union or which shall be included in the computation of payments to be made by Operator to Union, the amount of any payment which may be required of Union by said Mortgagee, in its sole discretion, on account thereof, shall be binding upon the parties hereto and said Mortgagee or Union, or both, shall have uncontrolled discretion during the term hereof in paying taxes regardless of any alleged or possible invalidity or defect therein or the obligation or lien therefor, and neither said Mortgagee nor Union shall be deemed to assume any liability or responsibility for the validity of any tax levied or for the accuracy of any tax bill, and Operator waives any right to object to any such [fol. 2460] payment on account of any invalidity or defect in the levy or assessment of any of such taxes, and agrees that a receipt by the proper officer shall be conclusive evidence both as to the amount of and validity of such payments.

17. Access

Said Mortgagee, or its officers, agents and employees, and Union, or its officers, agents and employees and contractors, shall at all times be entitled to access to any and all parts of said premises for the purpose of exercising any

right reserved to Mortgagee in said Mortgage, or in respect of Union, for the purpose of determining Operator's compliance with the terms, conditions and covenants of this agreement, or for exercising any right reserved in this agreement or for doing any act or thing in or about the premises which to Union may appear to be necessary for the maintenance, care or repair thereof.

18. Information and Reports

Operator will at all reasonable times furnish to said Mortgagee direct, or to Union, any and all information which said Mortgagee or Union may request concerning performance or compliance by Operator of or with the covenants of said City Lease or of said Mortgage, and Operator will permit said Mortgagee or Union, or both, at all reasonable times, to make investigations or examinations concerning such performance or compliance. Operator will make and render to Union or to said Mortgagee direct such financial, operating and other reports and at such times, from time to time, and in such manner and detail as shall be required by Union or by said Mortgagee as will enable Union to make and render such financial, operating and other reports and at such times, from time to time, and in such manner and detail, as shall be required of Union by said Mortgagee.

19. Books and Records

Operator will at all times keep and maintain books, records and accounts in a manner satisfactory to Union and [fol. 2461] adequate fully and accurately to reflect and determine any and all matters pertaining to any and all of its obligations hereunder. Operator will permit Union, or persons designated by it, at any and all times during business hours to audit, inspect, examine and copy any and all of said books, records and accounts. Operator will allow said Mortgagee to inspect at any time all records pertaining to the said premises. Operator will furnish promptly and fully at any time upon written request and in such form as said Mortgagee or Union may require certified audits of its books of account with respect to said premises and any and all additional information concerning said premises and its business, past operations and prospects. Union will at all times keep and maintain

books, records and accounts that will adequately, fully and accurately reflect and determine any and all matters pertaining to any and all of Union's obligations hereunder, and will permit Operator or persons designated by it at any and all times during business hours to audit, inspect, examine and copy any and all of said books, records and accounts.

20. Refunding of Stock

If it shall appear to Operator to be desirable or economical for Union to replace any outstanding six per cent (6%) cumulative preferred stock with a secured or unsecured bonded or long-term indebtedness in an amount equal or substantially equal to the par value of such stock and bearing interest at six per cent (6%) per annum, payable semi-annually, and if Operator shall give Union assurances satisfactory to Union for the repayment of all costs and expenses to be incurred by Union in so doing; Union will use its best efforts to obtain the consent of said Mortgagee and of its stockholders to the redemption of such stock and the incurring of such indebtedness, but it is [fol. 2462] recognized that this agreement is being made without formal assent to such action by the stockholders of Union and that any such redemption of stock and all matters incidental thereto shall be subject to the prior vote and approval of said stockholders, and to the consent and approval of all governmental authorities having jurisdiction in the premises. If such stock be redeemed Union may in its discretion issue a new preferred stock having like voting rights and having such par and nominal value as Union may deem necessary or advisable, or may create a voting trust with respect to all or part of its stock, containing such voting rights and subject to such rights and privileges as may appear to Union to be advisable. Union shall not be obligated to redeem or retire such outstanding preferred stock if it shall appear to Union in its sole discretion that an undue amount of cash may be required to pay the holders of such stock, if any, as may decline to accept such indebtedness in exchange for their stock, unless operator shall advance to Union the necessary funds and accept bonds or debentures to evidence the obligation of Union in satisfaction of said advance. Should Operator request the redemption of said stock, Operator will promptly pay or reimburse Union for all costs and expenses

incurred or paid by Union in such respects, whether or not the operation be completed. Nothing in this paragraph or elsewhere in this agreement shall preclude Union from voluntarily redeeming or retiring all or part of its outstanding preferred stock and/or from substituting therefor any secured or unsecured bonded or long-term indebtedness in an amount not greater than the amount of the stock so redeemed or retired. If any now outstanding preferred stock of Union be redeemed or retired in accordance with any of the provisions of this paragraph, all references in other [fol. 2463] portions of this agreement to dividends upon preferred stock and to payments for redemption of such preferred stock shall apply in lieu thereof to the bonded or long-term indebtedness, and interest at six per cent (6%) per annum, payable semiannually thereon, incurred to enable the redemption of such stock.

21. Operator's Stockholders

Operator warrants that at least fifty-one per cent of each class of its stock is, and will continue to be, owned by Andrew Pansini. In the event said warranty be unfounded, or in the event said Andrew Pansini shall cease to own such amount of any class of said stock, Union may at its option terminate and cancel the rights of Operator hereunder; provided, that no such right of termination or cancellation shall arise on account of the transfer of any such stock upon the death of Andrew Pansini.

22. Leases and Assignments

Operator will not underlet the whole or any part of said premises or any interest therein or transfer or assign this agreement or any rights of Operator hereunder, or encumber or mortgage its interest in said premises. Any attempted sublease, transfer, assignment, mortgage or encumbrance shall be null and void, at the option of Union.

This agreement shall not, nor shall any right or interest hereunder, be subject to transfer by operation of law or otherwise. If Operator shall file or be adjudicated subject to proceedings in bankruptcy, receivership, for the relief of debtors, or for an arrangement, the same shall constitute a breach of this agreement, all rights under this agreement shall, and this agreement shall, forthwith cease and terminate, without, however, releasing Operator from accrued

obligations, prior defaults or damages for such breach. [fol. 2464] If Operator shall fail in business or make a general assignment for the benefit of creditors then all rights under this agreement, and this agreement, shall at the option of Union cease and terminate.

23. Signs and Entrances.

Operator will not place or maintain any signs in the entrance to or on the exterior of said premises or in the park over said premises without the approval of the Board of Directors of Union and will at all times comply with all requests of said Board in respect of the maintenance of such signs. The manner of ingress and egress to and from said premises and adjoining public streets and sidewalks shall, unless otherwise provided by law, ordinance or lawful governmental regulations, be subject to the approval of the Board of Directors of Union and Operator will from time to time change the same to eliminate any conditions of which said Board shall not approve.

24. Surrendering Possession

Upon the termination of this agreement and the rights of Operator thereunder for any reason, either before or after the normal expiration of the term thereof, Operator will surrender possession of the premises to union and leave the same in clean and good condition and repair and remove therefrom all rubbish and any of its own personal property that it is not precluded hereunder from removing. If Operator shall not remove any of such personal property, Union may remove and store the same at the cost and expense of Operator and may forthwith or at any time thereafter sell all or any part of such property, at public or private sale, and without any prior demand upon or notice to Operator, reimburse itself for any sums due it from Operator, and remit any excess proceeds, after deducting the costs and expenses of sale, to Operator.

25. Performance by Union

[fol. 2465] Should Operator fail to do any act required of it hereunder or required of it in respect of said Mortgage or in respect of said City Lease then Union, without notice to or demand upon Operator and without releasing Operator from any obligation hereunder, may make or do the same

in such manner and to such extent as Union may deem necessary to protect its interest, Union being authorized to enter upon said property for such purposes; and in exercising any such powers Union may pay all necessary expenses, employ counsel, and pay his reasonable fees. Any and all sums expended by Union in connection with the exercise of any such power shall be repaid by Operator to Union immediately, with interest at the rate of seven per cent (7%) per annum. Said Mortgagee may exercise similar rights in respect of said Mortgage to the extent and in the manner provided therein.

Neither Union nor said Mortgagee shall be obligated to act in any such respect nor be liable or accountable to Operator for anything done or not done if it shall so act or while so acting.

26. Damage and Casualties

Union shall not be obligated or responsible in any respect for the repair or maintenance of said premises or any part thereof, but shall have the right and option to repair or maintain said premises in the event Operator shall default in its obligations hereunder in such respects. Further, Union shall not be obligated to repair or reconstruct the said premises if the same be wholly or partially destroyed or damaged from any cause or casualty whatsoever, but shall have the right and option to repair, reconstruct or replace said premises in the event the same be wholly or partially destroyed or damaged from any such cause or casualty. If any substantial part of said premises be destroyed or damaged by fire, earthquake, explosion, war, invasion or [fol. 2466] act of God, or other unavoidable and unusual event or casualty not within the control of Operator, and if such destruction or damage shall not have been caused by the negligence of Operator or by any breach of its obligations hereunder, Operator shall have no obligation under paragraph 8 above to reconstruct or replace the said premises or such part thereof so damaged or destroyed. If any damage to or destruction of said premises shall occur in respect of which Operator has no obligation in view of the foregoing sentence, and shall result in Operator being unable to occupy a material part of the premises, then there shall be rebated to Operator a proportionate part of the payments required of Operator hereunder corresponding to

the number of days during which such condition shall exist and to the extent such condition shall interfere with the production of revenue in and about said premises. In the event Union shall not elect to repair, reconstruct or replace the premises after a material part thereof may be so damaged or destroyed, this agreement and the term hereby created may be terminated by Union and, if Operator is unable to conduct its business in said premises substantially as before and said damage or destruction is of a kind which Operator is not obligated to repair or replace (as provided above in this paragraph), the same may be terminated by Operator. If the premises be entirely destroyed, this agreement and the term hereby created shall cease and terminate.

If any of the structural portions of the premises shall be damaged or destroyed from any causes not within the control of Operator and not occasioned by or contributed to by the negligence of Operator or any breach of its obligations hereunder, and if Union shall have available or un- [fol. 2467] expended any moneys paid to it by Operator pursuant to the provisions of clause (5) of Paragraph 7, "Payments" above, and if Union in its sole discretion sees fit so to do, Union will apply said moneys to repair such damage or destruction; provided that Union shall be the sole judge in its uncontrolled discretion of the availability of such money for such purposes and of the advisability of repairing such damage or destruction, and shall not be precluded from disbursing or expending said moneys for any purpose.

27. Holding Over

Any holding over after the term hereof, with the consent of Union, shall be for periods not in excess of one month each and payment therefor shall be at the rate per month of one-twelfth (1/12) of the payment required of Operator for the last prior year, plus fifty per cent (50%) thereof and otherwise shall be on the terms and conditions in this agreement specified.

28. Operator's Status

Nothing in this agreement shall give Union any power or right of direction or control over the operations of Operator or its officers, agents or employees, and Operator shall be an independent contractor, free from any such powers or rights.

29. Right of Re-Entry

Should Operator default in making any payment required hereunder for three (3) days after written notice to pay the same is received or posted in said premises, or should Operator default or continue in default in respect of any term, covenant or condition hereof for more than ten (10) days after written notice is received thereof, Union, in addition to such other rights or remedies as it may have shall have the immediate right of re-entry and may remove all persons and property from said premises subject to the right of storage or sale as aforesaid; provided, however, that if any default is not in payment of money [fol. 2468] and cannot be remedied within ten (10) days, such right of re-entry and all rights of forfeiture, termination of suit, if Operator shall have commenced the elimination of such default within said period of ten (10) days, shall be postponed so long as Operator shall be continuously proceeding in good faith to eliminate the same.

30. Termination and Reletting

Should Union elect to re-enter as hereinabove provided, or retake possession pursuant to legal proceedings or pursuant to any notice provided by law, or should Operator vacate, abandon or surrender the premises, or should Operator default under any provision hereof, Union may either terminate this agreement and the term thereby created and recover from Operator all damages which may be incurred by reason of the breach of this agreement by Operator, including the recovery of possession, or may, from time to time, without terminating this agreement or the term hereby created, let the premises for all or part of the remaining term, from time to time, to a tenant of tenants satisfactory to Union and at any rental that may be obtained, with reasonable diligence, with the right to make alterations, additions and repairs of or to said premises; and, should any such rental actually received be less than the payments required of Operator hereunder, Operator shall pay such deficiency, together with the costs and expenses incurred in said letting and in the administration of said premises and such letting and such deficiency shall be paid monthly and such costs and expenses shall be paid as incurred. No re-entry or taking of possession shall be construed as an election by Union to

terminate this agreement or the term hereby created unless a written notice to such effect be given Operator, or unless such termination be decreed by a court of competent [fol. 2469] jurisdiction. Notwithstanding Union may repossess or re-let said premises without such termination, Union may at any time thereafter elect to terminate this agreement and the term thereby created for any previous breach.

31. Remedies Cumulative

All rights, options, privileges and remedies conferred in this agreement or by law upon Union shall be cumulative and the exercise of any one or more thereof shall not preclude the exercise of any other or others. The specification herein of the rights, options, privileges and remedies of Union and of the rights, options and privileges of said Mortgagee shall not be deemed to be exclusive of but shall be in addition and supplemental to all rights, options, privileges and remedies conferred by law upon Union or by law or said Mortgage upon said Mortgagee, except, in respect of Union, as those conferred upon Union by law may be specifically modified by some provision of this agreement.

32. Waivers

The waiver by Union of any breach hereof shall not operate as a waiver of any subsequent breach of the same or any other term, condition, covenant or provision hereof in the absence of a written agreement to such effect. No lapse of time or delay by Union shall be deemed a waiver of any breach of any term, condition, covenant or provision hereof. No waiver shall ever occur unless the same be in writing.

33. Covenants are Conditions

Each and all of the terms, covenants and provisions of this agreement on the part of Operator to be performed shall also constitute conditions upon the continued enjoyment of the rights herein conferred on Operator upon the breach of which this agreement and the term hereby created may be terminated.

[fol. 2470] 34. Counsel Fees

Should suit be brought at any time for an unlawful detainer of said premises or for the recovery of any payments due from Operator or to enforce or because of the breach of any term, condition, covenant or provision of this agreement, or in the event Union shall deem it necessary to retain legal services though suit shall not be brought, Operator shall pay to Union, if Operator be in default hereunder, a reasonable sum for the fees of its attorneys.

35. Notices

Any notice which Union may be required or may desire to give to Operator shall be in writing and may be delivered to any adult person apparently in charge of said premises or if there be no such person there, may be left in a conspicuous place at said premises or be actually delivered to the President or Secretary of Operator or be mailed, postage prepaid, registered mail, return receipt requested, to Andrew Pansini [redacted] California, or to such other person and at such other address as Operator may hereafter designate in any notice given to Union as next provided. Any notice which Operator may be required or may desire to give to Union shall be in writing and may be delivered to any adult person apparently in charge of the principal office of Union in the City and County of San Francisco, California, or be actually delivered to the President or Secretary of Union or be mailed, postage prepaid, registered mail, return receipt requested, addressed to Union at 114 Sansome Street, San Francisco, or to such person and at such other address as Union may hereafter designate in any notice given as above provided.

36. Time

Time is of the essence of this agreement.

[fol. 2471] 37. Successors and Assigns

All rights, privileges and remedies conferred by this agreement upon Union shall inure to, and this agreement shall be binding upon, its successors and assigns. All of the terms, conditions, covenants and provisions hereof shall be binding upon the successors, lessees and assigns of Operator, but this provision shall not be deemed to be a consent

[fol. 2475]

GOVERNMENT EXHIBIT No. 99

Interrogatory #4 Part II

Standard Oil Company of California

Total Gross Quantities of Gasoline Sold to Dealers

All Figures Expressed in 42 Gal. Barrels

	California	Arizona	Nevada	Oregon	Washington	Utah	Idaho
1936	1,798,996	281,043	161,056	570,139	809,740	175,954	229,505
1937	1,688,624	268,826	158,558	523,583	763,131	187,076	212,551
1938	1,884,772	267,133	171,905	495,515	831,905	240,750	230,444
1939	1,709,612	332,234	206,628	469,843	972,695	318,516	277,362
1940	2,032,076	276,953	131,136	559,955	721,788	227,852	225,425
1941	2,441,008	338,094	156,720	685,001	874,099	276,093	271,889
1942	2,123,544	204,796	102,350	449,075	595,201	184,600	175,773
1943	1,690,959	176,325	96,219	426,501	546,836	198,598	173,603
1944	1,570,743	169,376	88,551	380,163	490,234	186,514	165,762
1945	2,093,278	251,863	121,266	525,604	645,419	247,005	209,335
1946	3,225,122	393,467	197,310	861,865	1,038,245	331,431	347,054

[fol. 2476]

GOVERNMENT EXHIBIT No. 100

Interrogatory #4 Part III

Standard Oil Company of California

Total Gross Quantities of Automotive Lubricating Oils Sold to Dealers

All Figures Expressed in 42 Gal. Barrels

	California	Arizona	Nevada	Oregon	Washington	Utah	Idaho
1936	39,639	6,181	3,538	12,548	17,833	3,875	5,064
1937	39,743	6,328	3,742	12,335	17,956	4,395	5,013
1938	38,747	5,481	3,532	10,191	17,095	4,947	4,718
1939	37,568	7,289	4,539	10,322	21,369	7,007	6,084
1940	47,740	6,499	3,068	13,145	16,949	5,352	5,274
1941	48,636	6,730	3,124	13,641	17,408	5,495	5,414
1942	47,409	4,570	2,268	10,013	13,273	4,125	3,919
1943	49,565	5,152	2,813	12,525	16,037	5,831	5,093
1944	40,884	4,391	2,311	9,885	12,752	4,859	4,319
1945	49,980	6,006	2,881	12,539	15,381	5,889	4,980
1946	72,928	8,871	4,450	19,475	23,448	7,469	7,830

[fol. 2477] GOVERNMENT EXHIBIT 101

Lease

Dated , 19

1. lessor, hereby leases to STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Lessee, for the term commencing on the day of , 19 , and ending on the day of , 19 , the following described premises in the City of , County of , State of :

2. Lessee agrees to pay Lessor rental for the use and occupancy of the leased premises as follows:

provided, however, that no rentals shall be due and payable hereunder until the date on which the leased premises are delivered to Lessee free and clear of all improvements except such as may be covered by this lease or belong to Lessee. Lessee shall have the right to set off against the rental payable hereunder any rentals owing Lessee by Lessor under the terms of any other agreement in effect between Lessee and Lessor.

[fol. 2478] 3. Lessee shall have the right during its occupancy of the leased premises to use such premises for any lawful purposes whatsoever, including, but without limiting the generality of the foregoing, the use of such premises for service station purposes. Lessee shall further have the right during its occupancy to rearrange or remodel any improvements, trade or other fixtures, structures, buildings, or equipment on said leased premises; to construct and maintain on the leased premises such buildings structures, improvements or equipment as Lessee may desire, and to remove the same or any part thereof at will; and to cut curbs, construct roadways and use sidewalks for vehicles to pass to and from the leased premises. Upon the expiration of this lease, or any extension or renewal thereof, Lessee agrees to replace all curbs and sidewalks cut or removed by Lessee during Lessee's occupancy of the premises. If it is or becomes unlawful to conduct any particular operation or to

to any letting or assignment by Operator of this agreement or any rights thereunder.

38. Union has at the request of Operator granted Operator the right to incorporate under the name "Union Square Garage, Inc." Operator will upon the termination of this agreement on the expiration of the term thereof or at any earlier time it may terminate as elsewhere herein provided, change its name and discontinue the use in said name of the words "Union Square." Operator will not use the name or words "Union Square" in any of its business or operations aside from the business conducted upon said premises subject hereto, either during or after the term of this agreement.

In witness whereof, the parties have executed these presents by their officers thereunto duly authorized the day and year first above written.

Union Square Garage Corporation, a corporation, (Corporate Seal), by C. H. Wall, President, by Ramsey Moran, Asst. Secretary. Union Square Garage, Inc., a corporation, (Corporate Seal), by Andrew Pansini, President, by R. McCurdy, Secretary.

(Here follow 3 Photolithographs, side folios 2472, 2473, 2474)

erect or maintain any particular structure or equipment on the leased premises, or if any part of the leased premises or the approaches thereto are condemned or changed by public authority, or if any highway or street change is made diverting or re-routing traffic away from the leased premises, so that in any such case enumerated above it becomes impossible or impracticable in Lessee's opinion to use the leased premises for any purpose for which such premises are being used at the time such use is declared unlawful or such condemnation or change is effected, then Lessee shall have the right to terminate this lease by giving Lessor ten (10) days' notice in writing of such termination. If, as a result of causes other than those hereinabove set out, such as earthquake, fire, flood, strikes, riots, insurrection, or other similar or different causes beyond the control of Lessee, the leased premises shall become unusable from a practical standpoint, for service station purposes for a period of thirty (30) consecutive days or longer, then Lessee may, effective on the day of the happening of any such event, suspend all rental payments hereunder until the leased premises are again so usable.

4. Lessee shall have the right at any time during Lessee's occupancy of the leased premises, or within a reasonable time thereafter, to remove any and all buildings, improvements, fixtures and equipment, placed by it, or by its predecessor in interest, in, under, or upon the leased premises, or acquired by Lessee whether before or during the term hereof, but Lessee shall not be obliged to do so.

5. Lessee shall pay all taxes levied or assessed during the term of this lease on any facilities located on the leased premises while such facilities are owned by Lessee. All other ~~real or personal~~ property taxes or assessments, including all street improvements or other special taxes or assessments, shall be paid by Lessor.

6. Lessee, while in possession, shall have the prior right, to be exercised by it or by its nominee, to buy the whole or any part of the leased premises or any larger parcel of which the leased premises are a part. If Lessor receives from a third party an acceptable bona fide offer to buy such property, Lessor shall forthwith give Lessee written notice thereof together with a copy of such offer. Lessee or its nominee shall have sixty (60) days from the receipt of such

GOVERNMENT EXHIBIT NO. 85

Dated January 8, 1946

Standard Oil Company of California
225 Bush Street,
San Francisco, California.

Gentlemen:

Please refer to those certain agreements respectively dated January 8, 1946 _____, as now operative between us covering the use and occupancy of the premises situated at 1085 East 9th South (Street) Salt Lake City (City) Utah (State) and the operation of a service station on said premises.

~~You will please take notice that I (we) have as of this date appointed~~ _____ as my (our) agent for the sale of petroleum products and other goods under the terms of said agreements, and you are hereby authorized to make deliveries of such merchandise to him and to receive payment from him therefor. You are hereby directed, during the time this appointment is in effect, to make rental payments payable by you under said agreements to, and to collect rental payments payable by (me) (us) under said agreements from him (me) (us).

In the event of any default in payments of rental or for products and other goods as provided above you may look ~~to me (us) for collection of such delinquent payments.~~

Yours very truly,

Dernice Duffin
(Dealer)

Agreed to:

Darwin C. Duffin
To be signed by Dealer's Agent

Agent Appointment
Two-Party Transaction.

B-488 1 (9-43)

2472

You will please take notice that I have appointed Darwin C. Duffin as the operater of said service station, and for the sale of petroleum products and other goods furnished by you under the terms of said agreements. You are to look to him personally and not to me for the payment of the purchase price of such products and merchandise as you deliver to such service station while the Lease and Sublease are in effect.

FEB 15 JSM

MEMORANDUM

San Francisco, California
February 8, 1946

2297 SOA

**LEASE SITE AND LESSOR BUILT STATION
MAKE LOAN $7,000 BERNICE DUFFIN
SALT LAKE CITY, UTAH**

MR. E. J. McCLANAHAN:
Building

It is recommended that Company loan Mrs. Bernice Duffin (a widow) $7,000 to assist her in the cost of constructing a service station located on property which she owns free and clear on 11th East and 9th South Streets, Salt Lake City, Utah. Company's loan will be secured by first mortgage and promissory note with 100% being returned at no interest in 120 equal montly payments. Lessor will invest $5,000 in building this station in addition to the $7,000 she will borrow from Company.

Company will make an investment of $3,516 in the furnishing and installation of miscellaneous salvable operating equipment on which no return will be secured. Company will secure a ten year lease with a five year option and sublease back on an offset basis.

The proposed transaction exceeds Dealer Sales authority, inasmuch as the loan is over $2,500, it is to be repaid over 120 months rather than a sixty month period.

Estimated Normal Sales: 10,500 gallons per month

Loan: $7,000

Repayment: 100% at no interest in 120 equal monthly payments.
Security: First mortgage and promissory note
Appraisals:
Keith L. Knight, Salt Lake City, Utah $7,000
H. A. Havercamp, Salt Lake City, Utah 6,150

The above appraisals cover only the vacant property. With the proposed investment exclusive of the miscellaneous operating agreement which Company will furnish, the appraised value will be increased $12,000.

Proposed Ground Rental: $100.00 per month.

Proposed Lease Commitment: 30 days. If this cancellation privilege exercised, Company to give bill of sale to lessor on the equipment it is to install.

Maximum Assured Tenure: 180 months

Return from Dealer: $58.33 per month repayment of loan principal plus $100.00 per month over sublease.

11981

notice and offer to buy such property at the terms of such offer relating to such property, or at such lesser terms as Lessor and Lessee or its nominee may agree upon. If Lessee or its nominee fails to exercise this option and Lessor sells such property to a third person, such sale shall be made subject to the terms and provisions of this lease including, but without limiting the generality of the foregoing, the provisions of this paragraph. Lessee agrees to notify Lessor in writing of any nominee designated for the purpose of this paragraph, and warrants that such nominee will be financially responsible; Lessor agrees to recognize and accept any such designation of nominee for the purpose of this paragraph.

7. If Lessee shall hold over after the expiration of the term of this lease, or any extension thereof, such tenancy shall be from month to month only and upon all the terms, covenants, and conditions hereof.

8. Every provision hereof imposing an obligation on Lessor is a material inducement and consideration for the execution of this Lease by Lessee, and any breach, violation, or failure with respect thereto by Lessor shall entitle Lessee to terminate this lease forthwith by giving Lessor written notice of such termination, and no waiver by Lessee of any such breach, violation, or failure, shall waive any continuing, subsequent, or other breach, violation, or failure.

9. If any tax or charge is hereafter imposed upon Lessee, pursuant to any so-called Chain Store Tax Law hereinafter enacted by any governmental authority, for or on account of the operation of its service station on the leased premises, Lessee may terminate this lease at any time on ninety (90) days' notice to Lessor served after the enactment of such law.

10. Lessee shall have the right to terminate this lease at any time during the term hereof, or any extension thereof, by giving Lessor thirty (30) days' written notice of Lessee's intention so to do.

[fol. 2479] 11. Lessee may extend this lease for a further period of years by giving Lessor notice in writing of its intention so to do at any time prior to the expiration of the term hereof.

Economics:

Rental	$100.00
Depreciation	23.44
Amortization on loan	58.33
Total	$181.77

Return from Dealer:

Loan principal payment	$ 58.33
Offset ground rental	$100.00
Total	$158.33

Deficit	$ 23.44
Deficit per Gal.	.223¢

Endorsements: Mr. H. E. Hartline has endorsed the loan proposal.

Map: Vicinity map and photographs attached. Photographs show the existing Allen Oil Company service station on this property. However, these facilities have been removed by lessor from whom the Allen Oil Company leased.

Remarks: The deficit in securing this account is small in relation to the gallonage which will be secured. We recommend the acceptance of this proposal.

E. D. THOMPSON

2/8/46

Looks O.K. - security is ample and borrower worth over $50,000.

H. E. Hartline

JAW
ors.

(14988)

12. All rentals payable hereunder shall be paid to .....

unless and until Lessor designates some other party to receive rentals.

Written notices to Lessor hereunder shall be addressed to Lessor at .....

13. Written notices to Lessee hereunder shall be given to Lessee at .....

All notices shall be deposited in the United States Post Office, properly addressed as aforesaid, postage fully prepaid, for delivery by registered mail.

[fol. 2480] 14. Execution of this lease by Lessor constitutes an offer which shall not be deemed accepted by Lessee until Lessee has executed this lease and delivered a duplicate original thereof to Lessor.

15. This lease shall bind and inure to the benefit of the successors and assigns of Lessee, and shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of Lessor.

In Witness Whereof, these presents are hereby signed in triplicate by the parties hereto.

.....,
Lessor.

.....,
Lessor.

STANDARD OIL COMPANY OF CALIFORNIA,
Lessee.

By .....

Lease.

[fol. 2481] GOVERNMENT EXHIBIT No. 102

Lease

Dated , 19

1.

Lessor, hereby leases to STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Lessee, for the term commencing on the day of , 19 , and ending on the day of , 19 , the following described premises in the City of , County of , State of :

together with all improvements and fixtures located thereon.

2. Lessee agrees to pay Lessor rental for the use and occupancy of the leased premises as follows:

provided, however, that no rentals shall be due and payable hereunder until the date on which possession of the leased premises has been delivered to Lessee. Lessee shall have the right to set off against rental payable hereunder any rentals owing Lessee by Lessor under the terms of any agreement in effect between Lessee and Lessor.

[fol. 2482] 3. Should any of the improvements, fixtures or equipment referred to in paragraph 1 hereof, become obsolete or unfit for the purposes intended, Lessee shall have the right to return any such improvements, fixtures, or equipment to Lessor at and to replace the same with such improvements, fixtures or equipment as Lessee may deem necessary; title, however, to such new improvements, fixtures or equipment to remain in Lessee.

4. Lessor agrees during the term of this lease or any extension thereof to maintain in good condition and repair all service station equipment, facilities, yards, driveways, and other improvements installed or made by Lessor on the leased premises.

5. Lessor agrees to insure the leased premises and all property placed thereon by Lessor against loss by fire. In

the event said premises or property are destroyed wholly or in part by any cause during the term hereof, then Lessor shall forthwith re-enter said premises and shall with diligence repair the destroyed portion or portions of said premises or property. If, however, the premises or the destroyed portion thereof becomes untenantable in the opinion of Lessee, then the rent shall cease until such time as they are again, in the opinion of Lessee, tenantable. Should Lessor neglect forthwith to restore said premises to the same condition as they were prior to their destruction, Lessee shall, at Lessee's option:

(a) Repair said premises, deducting the cost thereof from rents accruing, with reasonable interest allowance for monies advanced, or

(b) Terminate this lease.

Notwithstanding the foregoing, Lessor shall not be obligated to restore or repair any improvements, fixtures or equipment placed on the leased premises by Lessee.

6. Lessee shall have the right at any time during Lessee's occupancy of the leased premises, or within a reasonable time thereafter, to remove any and all buildings, improvements, fixtures and equipment placed by Lessee or by Lessee's predecessor in interest, in, under or upon the leased premises or acquired by Lessee whether before or during the term hereof, but Lessee shall not be obliged to do so.

7. Lessee shall pay all taxes levied or assessed during the term of this lease on any facilities located on the leased premises while such facilities are owned by Lessee. All other real or personal property taxes or assessments, including all street improvements or other special taxes or assessments, shall be paid by Lessor.

8. Lessee shall have the right during its occupancy of the leased premises to use such premises for any lawful purposes whatsoever, including, but without limiting the generality of the foregoing, the use of such premises for service station purposes. Lessee shall further have the right during its occupancy, to rearrange or remodel any improvements, trade or other fixtures, structures, buildings, or equipment on said leased premises; to construct and main-

tain on the leased premises such buildings, structures, improvements or equipment as Lessee may desire, and to remove the same or any part thereof at will; and to cut curbs, construct roadways and use sidewalks for vehicles to pass to and from the leased premises. Upon the expiration of this lease, or any extension or renewal thereof, Lessee agrees to replace all curbs and sidewalks cut or removed by Lessee during Lessee's occupancy of the premises. If it is or becomes unlawful to conduct any particular operation or to erect or maintain any particular structure or equipment on the leased premises, or if any part of the leased premises or the approaches thereto are condemned or changed by public authority, or if any highway or street change is made diverting or re-routing traffic away from the leased premises, so that in any such case enumerated above it becomes impossible or impracticable in Lessee's opinion to use the leased premises for any purpose for which such premises are being used at the time such use is declared unlawful or such condemnation or change is effected, then Lessee shall have the right to terminate this lease by giving Lessor ten (10) days notice in writing of such termination.

9. Every provision hereof imposing an obligation on Lessor is a material inducement and consideration for the execution of this lease by Lessee, and any breach, violation, or failure with respect thereto by Lessor shall entitle Lessee to terminate this lease forthwith by giving Iessor written notice of such termination, and no waiver by Lessee of any such breach, violation, or failure, shall waive any continuing subsequent or other breach, violation, or failure.

10. If any tax or charge is hereafter imposed upon Lessee pursuant to any so-called Chain Store Tax Law hereinafter enacted by any governmental authority, for or on account of the operation of Lessee's service station on the leased premises, Lessee may terminate this lease at any time on ninety (90) days' notice to Lessor served after the enactment of such law.

11. If Lessee shall hold over after the expiration of the term of this lease, or any extension thereof, such tenancy shall be from month to month only and upon all the terms, covenants, and conditions hereof.

[fol. 2483] 12. Lessee may extend this lease for a further period of ..... years by giving Lessor notice in

writing of Lessee's intention so to do at any time prior to the expiration of the term hereof, and upon the giving of such notice this lease shall be extended as above provided.

13. Lessee may terminate this lease at any time during the term hereof, or any extension thereof, by giving Lessor thirty (30) days' prior written notice of intention so to do.

14. Lessee, while in possession, shall have the prior right, to be exercised by it or by its nominee, to buy the whole or any part of the leased premises or any larger parcel of which the leased premises are a part. If Lessor receives from a third party an acceptable bona fide offer to buy such property, Lessor shall forthwith give Lessee written notice thereof together with a copy of such offer. Lessee or its nominee shall have thirty (30) days from the receipt of such notice and offer to buy such property at the terms of such offer relating to such property, or at such lesser terms as Lessor and Lessee or its nominee may agree upon. If Lessee or its nominee fails to exercise this option and Lessor sells such property to a third person, such sale shall be made subject to the terms and provisions of this lease including, but without limiting the generality of the foregoing, the provisions of this paragraph. Lessee agrees to notify Lessor in writing of any nominee designated for the purpose of this paragraph, and warrants that such nominee will be financially responsible; Lessor agrees to recognize and accept any such designation of nominee for the purpose of this paragraph.

15. All rentals payable hereunder shall be paid to

unless and until Lessor designates some other party to receive rentals.

16. Written notices to be given by Lessee to Lessor hereunder shall be addressed to Lessor at . Written notices to Lessee hereunder shall be given to Lessee at . All notices shall be deposited in the United States Post Office, properly addressed as aforesaid, postage fully prepaid, for delivery by registered mail.

[fol. 2484] 17. Execution of this lease by Lessor constitutes an offer which shall not be deemed accepted by Lessee

until Lessee has executed this lease and delivered a duplicate original thereof to Lessor.

18. This lease shall bind and inure to the benefit of the successors and assigns of Lessee, and shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of Lessor.

In witness whereof, these presents are hereby signed in triplicate by the parties hereto.

.....
Lessor.

.....
Lessor.

STANDARD OIL COMPANY OF CALIFORNIA,
Lessee.

.....

[fol. 2485] GOVERNMENT EXHIBIT No. 103

Lease

Dated , 19

1. .....
Lessor,
hereby leases to STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Lessee, for the term commencing on the day of , 19 , and ending on the day of , 19 , the following described premises in the City of , County of , State of :

together with all improvements and fixtures now or hereafter placed on said premises by Lessor.

2. Lessee agrees to pay Lessor rental for the use and occupancy of the leased premises as follows:

provided, however, that no rentals shall be due and payable hereunder until the date on which possession of the leased

premises is delivered over to Lessee with the service station completely constructed thereon and all fixtures and equipment installed by Lessor in accordance with Paragraph 3 hereof. Lessee shall have the right to set off against rental payable hereunder, any rentals owing Lessee by Lessor under the terms of any other agreement in effect between Lessee and Lessor.

[fol. 2486] 3. Lessor agrees forthwith to construct a service station, satisfactory to Lessee, on the leased premises, at Lessor's own expense, in strict accordance with the ground plan, plan of elevations, and list of improvements and fixtures marked Exhibit "A", all of which are hereto attached, and made a part hereof, title to all such property to remain in Lessor. Should any of the improvements or fixtures become obsolete or unfit for the purposes intended, Lessee shall have the right at Lessee's option to return any such improvements or fixtures to Lessor at . . . . . , and to replace the same with such improvements, fixtures or equipment as Lessee may deem necessary; title, however, to such new improvements, fixtures or equipment to remain in Lessee.

4. Lessor agrees to maintain in good condition and repair all service station equipment, facilities, yards, driveways, and other improvements installed or made by Lessor on the leased premises. Should Lessor fail to so maintain and repair, Lessee shall, at Lessee's option, have the right either to make such repairs, and deduct the cost thereof from rents accruing hereunder, with reasonable interest allowance for monies advanced, or to terminate this lease.

5. Lessor agrees to insure the leased premises and all property placed thereon by Lessor against loss by fire. In the event said premises or property are destroyed wholly or in part by any cause during the term hereof, then Lessor shall forthwith re-enter said leased premises and shall with diligence repair the destroyed portion or portions of said premises or property. If, however, the leased premises or the destroyed portion thereof become untenantable in the opinion of Lessee, then the rent shall cease until such time as they are again, in the opinion of Lessee, tenantable. Should Lessor neglect forthwith to restore said premises to

the same condition as they were prior to their destruction, Lessee shall, at Lessee's option:

(a) Repair said premises, deducting the cost thereof from rents accruing, with reasonable interest allowance for monies advanced, or

(b) Terminate this lease.

Notwithstanding the foregoing, Lessor shall not be obligated to restore or repair any improvements, fixtures or equipment placed on the leased premises by Lessee.

6. Lessee shall have the right at any time during Lessee's occupancy of the lease-premises; or within a reasonable time thereafter to remove any and all buildings, improvements, fixtures, or equipment placed by Lessee or by Lessee's predecessor in interest, in, under, or upon the leased premises or acquired by Lessee whether before or during the term hereof, but Lessee shall not be obliged to do so.

7. Lessee shall pay all taxes levied or assessed during the term of this lease on any facilities located on the leased premises while such facilities are owned by Lessee. All other real or personal property taxes or assessments, including all street improvements or other special taxes or assessments, shall be paid by Lessor.

8. Lessee shall have the right during its occupancy of the leased premises to use such premises for any lawful purposes whatsoever, including, but without limiting the generality of the foregoing, the use of such premises for service station purposes. Lessee shall further have the right during its occupancy, to rearrange or remodel any improvements, trade or other fixtures, structures, buildings, or equipment on said leased premises; to construct and maintain on the leased premises such buildings, structures, improvements or equipment as Lessee may desire, and to remove the same or any part thereof at will; and to cut curbs, construct roadways and use sidewalks for vehicles to pass to and from the leased premises. Upon the expiration of this lease, or any extension or renewal thereof, Lessee agrees to replace all curbs and sidewalks cut or removed by Lessee during Lessee's occupancy of the premises. If it is or becomes unlawful to conduct any

particular operation or to erect or maintain any particular structure or equipment on the leased premises, or if any part of the leased premises or the approaches thereto are condemned or changed by public authority, or if any highway or street change is made diverting or re-routing traffic away from the leased premises, so that in any such case enumerated above it becomes impossible or impracticable in Lessee's opinion to use the leased premises for any purpose for which such premises are being used at the time such use is declared unlawful or such condemnation or change is effected, then Lessee shall have the right to terminate this lease by giving Lessor ten (10) days notice in writing of such termination.

9. Every provision hereof imposing an obligation on Lessor is a material inducement and consideration for the execution of this lease by Lessee, and any breach, violation, or failure with respect thereto shall entitle Lessee to terminate this lease forthwith by giving Lessor written notice of such termination, and no waiver by Lessee of any such breach, violation, or failure, shall waive any continuing subsequent, or other breach, violation, or failure.

10. If any tax or charge is hereafter imposed upon Lessee, pursuant to any so-called Chain Store Tax Law hereinafter enacted by any governmental authority, for or on account of the operation of a service station on the leased premises, Lessee may terminate this lease at any time on ninety (90) days' notice to Lessor served after the enactment of such law.

11. If Lessee shall hold over after the expiration of the term of this lease, or any extension thereof, such tenancy shall be from month to month only and upon all the terms, covenants, and conditions hereof.

[fol. 2487] 12. Lessee may extend this lease for a further period of years by giving Lessor notice in writing of Lessee's intention so to do at any time prior to the expiration of the term hereof.

13. Lessee, while in possession, shall have the prior right, to be exercised by it or by its nominee, to buy the whole or any part of the leased premises or any larger parcel of

which the leased premises are a part. If Lessor receives from a third party an acceptable bona fide offer to buy such property, Lessor shall forthwith give Lessee written notice thereof together with a copy of such offer. Lessee or its nominee shall have sixty (60) days from the receipt of such notice and offer to buy such property at the terms of such offer relating to such property, or at such lesser terms as Lessor and Lessee or its nominee may agree upon. If Lessee or its nominee fails to exercise this option and Lessor sells such property to a third person, such sale shall be made subject to the terms and provisions of this lease including, but without limiting the generality of the foregoing, the provisions of this paragraph. Lessee agrees to notify Lessor in writing of any nominee designated for the purpose of this paragraph, and warrants that such nominee will be financially responsible; Lessor agrees to recognize and accept any such designation of nominee for the purpose of this paragraph.

14. Lessee shall have the right to terminate this lease at any time during the term hereof, or any extension thereof, by giving Lessor thirty (30) days written notice of Lessee's intention so to do.

15. All rentals payable hereunder shall be paid to

unless and until Lessor designates some other party to receive rentals.

16. Written notices to Lessor hereunder shall be addressed to Lessor at

17. Written notices to Lessee hereunder shall be given to Lessee at

. All notices shall be deposited in the United States Post Office properly addressed as aforesaid, postage fully prepaid, for delivery by registered mail.

[fol. 2488] 18. Execution of this lease by Lessor constitutes an offer which shall not be deemed accepted by Lessee until Lessee has executed this lease and delivered a duplicate original thereof to Lessor.

19. This lease shall bind and inure to the benefit of the successors and assigns of Lessee, and shall bind and inure

to the benefit of the heirs, administrators, executors, successors and assigns of Lessor.

In witness whereof, these presents are hereby signed in triplicate by the parties hereto.

Lessor.

Lessor.

STANDARD OIL COMPANY OF CALIFORNIA,
Lessee.

By

(Here follow 2 Photolithographs, side folios 2489, 2490)

GOVERNMENT EXHIBIT NO. 104

CERTIFICATE

State of Oregon

OFFICE OF THE SECRETARY OF STATE

EARL T. NEWBRY

I, ROBERT S. FARRELL JR., Secretary of State of the State of Oregon, and Custodian of the Seal of said State, do hereby certify: that I maintain legal custody of the records of the Secretary of State of Oregon and that the attached are true transcripts from official records kept by me of:

(1) Gallonage of motor vehicle fuels sold in Oregon on which a tax has been paid to said State of Oregon as follows:

Year	Gallonage
1930	170,166,467.88
1935	183,304,590.52
1940	260,121,796.03
1941	297,766,614.12
1942	263,805,921.88
1943	229,772,825.89
1944	231,859,760.85
1945	269,102,597.16
1946	276,290,133.27

The gallonage reported for periods prior to July 1, 1943, includes all motor vehicle fuel such as gasoline, distillate, butane, propane, diesel fuel oil when sold for the purpose of operating motor vehicles upon public highways.

For the period after July 1, 1943, the gallonage reveals gasoline only.

(2) Gallonage of other motor fuels other than gasoline, including butane, propane, diesel fuel oils used in motor vehicles upon the public highways of Oregon and upon which taxes are paid to the State of Oregon and reported for the following years:

Year	Gallonage

Note:

This exhibit is illegible in certain portions.

— Cameraman

Note:

This exhibit is illegible in certain portions.

— Cameraman

In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon.

Done at the Capitol at Salem, Oregon, this 15th day of , A. D. 19-

Earl T. Newbry

Secretary of State

GOVERNMENT EXHIBIT NO. 105

MERCHANDISE INSPECTION

Reg.

☑ CHEVRON GAS STATION

☐ CAR DEALER UNDER CONTRACT

L Mildred — Location — District — 2171 - CL

Name — Sta. No. — Suffix

Check one: 3 party ☐ 2 party ☑ non-contracted ☐

**List all agreements in effect by form number and printing date.

Form numbers	SS 61-2	[illegible]	SS 74-4				
Printing date of above form	10/39	3/1/42	3/38				

If no competitive merchandise on hand indicate by checking box at right and disregard balance ☐

ITEM	PRODUCT	S. O. CO.	COMPETITIVE	COMPETITIVE BRANDS OR SUPPLIER
1	Automotive Oils	75 gals.	5 gals.	[illegible]
2	Automotive Greases	15. lbs.	0 lbs.	
3	Tires	0 units	2 units	Fire Stone

2	Automotive Greases	15. lbs.	0 lbs.	
3	Tires	0 units	2 units	Fire Stone
4	Tubes	0 units	2 units	Fire Stone
5	Batteries	0 units	0 units	
6	*Automotive Accessories	$ 0	$ 25.00	Firestone
7	Gasoline	Show Brand Name Only: Chevron Gasoline		

Inspection made on 7/4/47 (Date) by H H Grace S. O. Co. Representative.

*Under "Automotive Accessories" include only those competitive items which are comparable to list sold by S. O. Co.

Items 1, 2, 3, 4, 5 and 6 for Chevron Gas Stations.

Items 1, 2, and 7 for Car Dealer Contract Accounts.

**Be sure to indicate all leases, subleases, personal property leases, dealer agreements, and the like.

S-001 (2254-1-47)

2490

151-115

[fol. 2491] DEFENDANT EXHIBIT B

1. In which of the following states are petroleum products (gasoline, lub oil, greases, etc.) and or tires, tubes, batteries and/or other automotive accessories sold *at retail* by or for the company through employees, agents and/or dealers:

California
Oregon
Washington
Arizona
Nevada
Utah
Idaho

2. What was the maximum number *in each such state* of the following:

(a) Company-operated service stations
(b) *Retail* dealers and *retail* agents handling the company's branded products

during *each* of the following years:

1937 to 1946 inclusive.

3. What was the

(a) gallonage of company's gasoline
(b) gallonage of company's lub oil
(c) dollar retail price of tires and tubes
(d) dollar retail price of batteries
(e) dollar retail price of other automotive accessories

sold at *retail* in each such state during *each* of the years 1937 to 1946 inclusive by company-operated service stations and *retail* dealers and *retail* agents handling the company's branded products.

4. Is the company's branded *gasoline* sold at *retail* in any of these states through *retail* dealers or *retail* agents who handle the gasoline of other suppliers? If so, state the approximate number of such so-called split pump stations handling the company's gasoline in each such state for 1946 or according to the company's latest available figures.

[fol. 2492]

DEFENDANTS EXHIBIT NO. C

Tide Water Associated Oil Company Sales Statistics—Year 1941

	Grand Total	California	Oregon	Washington	Arizona	Nevada	Utah	Idaho
1. Petroleum products, tires and automotive accessories sold at retail in states indicated		Yes	Yes	Yes	Yes	Yes	Yes	Yes
2. Accounts handling Company's branded gasoline:								
a. Company-operated service stations	5	5						
b. Retail dealers	2288	1372	321	390	43	43	64	55
3. Sales at retail of following:								
a. Gallonage of Company's gasoline	149,332,012	101,488,052	17,358,085	17,995,222	2,240,694	2,473,543	5,835,043	1,941,373
b. Gallonage of Company's lube oils	2,326,382	1,507,332	326,689	313,806	31,604	39,633	69,949	37,369
c. Dollar price of tires & tubes	$ 748,844	545,355	88,256	44,401	13,548	31,899	13,484	11,901

NOTE.—We do not have dollar retail price for answer to 3(c) as sales shown above are made to dealers and distributors who in turn sell at retail.

[fol. 2493]

DEFENDANTS EXHIBIT NO. D

Tide Water Associated Oil Company Sales Statistics—Year 1946

	Grand Total	California	Oregon	Washington	Arizona	Nevada	Utah	Idaho
1. Petroleum products, tires and automotive accessories sold at retail in states indicated	.....	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2. Accounts handling Company's branded gasoline:								
a. Company-operated service stations	6	5	1	.....	.....	.....	.....	.....
b. Retail dealers	2621	1578	372	439	36	52	60	84
c. Accounts handling Company's branded motor oils	3018	1866	415	468	36	54	80	99
3. Sales at retail of following:								
a. Gallonage of Company's gasoline	200,475,875	139,441,519	23,362,779	22,905,307	2,598,247	3,806,367	5,413,100	2,948,556
b. Gallonage of Company's lube oil	3,622,847	2,378,878	458,690	545,094	45,272	73,990	55,956	64,967
c. Dollar price of tires & tubes	$ 2,789,100	1,873,600	285,400	378,200	33,200	104,700	41,200	72,800
d. Dollar price of batteries	$ 399,200	298,400	38,500	38,000	6,500	3,700	6,800	7,300
e. Dollar price of other automotive accessories	$ 821,600	550,500	129,700	117,600	7,000	9,100	1,300	6,400
4. Number of split retail dealers handling Company's branded gasoline	62	55	0	6	.....	.....	.....	1

NOTE.—We do not have dollar retail price for answers to 3(c), 3(d) and 3(e) as sales shown above are made to dealers and distributors who in turn sell at retail.

[fol. 2494] DEFENDANT EXHIBIT E

Service Station Lease

S.S

This Lease, made this day of 19 , between TIDE WATER ASSOCIATED OIL COMPANY, a Delaware corporation, Associated Division, as Lessor, hereinafter called "Lessor," and

(If a partnership, so state, giving name of partners;

where trade name, state name of proprietor)
as Lessee, hereinafter called "Lessee,"

Witnesseth

1. Lessor does hereby lease unto Lessee and Lessee does hereby hire from Lessor, all that certain real property situate in the City of , County of , State of , described as follows:

together with all buildings, improvements and equipment listed in attached Inventory (Form 4280 and Form 4281), hereinafter referred to as "premises."

2. The term of this Lease shall be for a period of one year commencing on the day of ; 19 ; and from year to year thereafter, subject to termination at the end of the first or any subsequent year by either party upon thirty days' written notice to the other; subject, however, to the right reserved by Lessor to terminate this Lease at any time upon thirty days' written notice to Lessee. In the event of Lessor's interest in said premises is held under a lease, then this Lease is made subject to all the terms, covenants and conditions thereof and shall terminate upon the termination of such lease.

3. As rental for the demised property herein, Lessee shall pay Lessor a sum equal to
(¢) cents for each gallon of gasoline delivered to the leased premises. Said rental shall be due and payable on or before the 10th day of each calendar month, based on the gallonage delivered during the preceding calendar month, or, at Lessor's option, at time of delivery.

4. Lessee shall:

(a) pay the rent as aforesaid; accept said premises in their present condition, which is known to Lessee, and

occupy and use the same solely as a gasoline service station and for the sale of such commodities and accessories as are usually sold at such stations; not assign this Lease or any interest hereunder nor sublet or vacate said premises nor cease to operate the same for the purpose for which they are leased hereunder; not make any additions or alterations to the improvements, nor remove any equipment, without Lessor's written consent, hereby waiving any right granted by law to make any repairs at Lessor's expense; permit Lessor to enter and inspect said premises at any time; and at any termination of this Lease surrender said premises to Lessor in good condition and repair with any additions and replacements;

(b) indemnify and save Lessor harmless from any and all liability, cost and expense on account of personal injury or fatality or property damage (including the persons or property of Lessee or Lessee's employees), arising from Lessee's possession or operation of said premises;

(c) comply with all the requirements of law and governmental authorities applicable to said premises and the conduct of Lessee's business thereon; procure and maintain in effect all permits necessary to operate said premises as a gasoline service station; pay any and all taxes, license fees, and other charges levied or assessed against any property of Lessee on said premises or in connection with the business conducted thereon; pay all charges for water and electricity and operating expenses; keep the sidewalks unobstructed and clear of ice and snow; maintain said premises in good condition, making all necessary repairs and replacements and keep the same in a clean and tidy condition.

5. Lessee may conduct his business on said leased premises as he sees fit, and none of the provisions of this Lease shall be construed as reserving to Lessor any right to exercise any control or management over the business or operations of Lessee. It is understood and agreed that neither Lessee, nor any person or persons performing any duties or engaged in any work at the request of Lessee upon the said premises, shall be an employee or agent of Lessor.

6. Lessor reserves the right, at its option, but shall not be obligated, to repair or reconstruct the leased facilities, and

may enter the premises at any reasonable time for such purposes.

7. Upon any default by Lessee hereunder or violation of any of the terms or conditions of this Lease, or should Lessee become bankrupt or insolvent or should any attachment or other legal process or proceedings be levied or instituted by anyone other than Lessor against said premises, or should Lessee sell, assign, pledge or mortgage said premises or any part thereof, or attempt to do so, or allow any lien to attach hereto, or in the event of the death of Lessee, Lessor may, without notice, immediately terminate this Lease and all Lessee's rights hereunder, and reenter and, in any manner, resume possession of said premises, Lessee hereby waiving all statutory rights inconsistent herewith.

8. The waiver of any breach of any of the provisions hereof shall not be deemed a waiver of any succeeding or other breach.

9. All notices under this Lease shall be duly given if forwarded by registered mail to Lessor, at its above address, or to Lessee, at said premises.

10. The making, execution and delivery of this Lease by Lessee have not been induced by any representations, statements, warranties, or agreements other than those herein expressed. This Lease embodies the entire understanding of the parties hereto, and there are no further agreements or understandings, written or oral, in effect between the parties hereto relating to the subject matter hereof; and this Lease cancels and supersedes any lease or other agreement between the parties hereto or their predecessors with reference to possession of said premises by Lessee.

In Witness Whereof, the parties hereto have caused this Lease to be executed the day and year herein first above written.

TIDE WATER ASSOCIATED OIL COMPANY,
ASSOCIATED DIVISION,

By _____,
Lessor.

_____
Lessee.

Witness to Lessee:

_____

[fol. 2495] Service Station Lease

S.S.

This Lease, made this day of 19 , between TIDE WATER ASSOCIATED OIL COMPANY, a Delaware corporation, Associated Division, as Lessor, hereinafter called "Lessor", and

(If a partnership, so state, giving name of partners;

where trade name, state name of proprietor)
as Lessee, hereinafter called "Lessee,"

Witnesseth

1. Lessor does hereby lease unto Lessee and Lessee does hereby hire from Lessor, all that certain real property situate in the City of , County of , State of , described as follows:

together with all buildings, improvements and equipment listed in attached Inventory (Form 4280 and Form 4281), hereinafter referred to as "premises."

2. The terms of this Lease shall be for a period of one year commencing on the day of , 19 , and from year to year thereafter, subject to termination at the end of the first or any subsequent year by either party upon thirty days' written notice to the other, subject, however, to the right reserved by Lessor to terminate this Lease at any time upon thirty days' written notice to Lessee. In the event of Lessor's interest in said premises is held under a lease, then this Lease is made subject to all the terms, covenants and conditions thereof and shall terminate upon the termination of such lease.

3. As rental for the said premises, Lessee shall pay Lessor $ per month, payable in advance on the first day of each calendar month; plus one cent (1¢) for each gallon of gasoline delivered to said premises in excess of 3,500 gallons during the calendar month, payable at time of delivery unless otherwise authorized by Lessor. For any period of Lessee's tenancy less than a calendar month, the foregoing rentals shall be prorated.

4. Lessee shall:

(a) pay the rent as aforesaid; accept said premises in their present condition, which is known to Lessee, and occupy and use the same solely as a gasoline service station and for the sale of such commodities and accessories as are usually sold at such stations; not assign this Lease or any interest hereunder nor sublet or vacate said premises nor cease to operate the same for the purpose for which they are leased hereunder; not make any additions or alterations to the improvements, nor remove any equipment, without Lessor's written consent, hereby waiving any right granted by law to make any repairs at Lessor's expense; permit Lessor to enter and inspect said premises at any time; and at any termination of this Lease surrender said premises to Lessor in good condition and repair with any additions and replacements;

(b) indemnify and save Lessor harmless from any and all liability, cost and expense on account of personal injury or fatality or property damage (including the persons or property of Lessee or Lessee's employees), arising from Lessee's possession or operation of said premises;

(c) comply with all the requirements of law and governmental authorities applicable to said premises and the conduct of Lessee's business thereon; procure and maintain in effect all permits necessary to operate said premises as a gasoline service station; pay any and all taxes, license fees, and other charges levied or assessed against any property of Lessee on said premises or in connection with the business conducted thereon; pay all charges for water and electricity and operating expenses; keep the sidewalks unobstructed and clear of ice and snow; maintain said premises in good condition, making all necessary repairs and replacements and keep the same in a clean and tidy condition.

5. Lessee may conduct his business on said leased premises as he sees fit, and none of the provisions of this Lease shall be construed as reserving the Lessor any right to exercise any control or management over the business or operations of Lessee. It is understood and agreed that neither Lessee, nor any person or persons performing any duties or engaged in any work at the request of Lessee upon the said premises, shall be an employee or agent of Lessor.

6. Lessor reserves the right, at its option, but shall not be obligated, to repair or reconstruct the leased facilities, and may enter the premises at any reasonable time for such purposes.

7. Upon any default by Lessee hereunder or violation of any of the terms or conditions of this Lease, or should Lessee become bankrupt or insolvent or should any attachment or other legal process or proceedings be levied or instituted by anyone other than Lessor against said premises, or should Lessee sell, assign, pledge or mortgage said premises or any part thereof, or attempt to do so, or allow my lien to attach hereto, or in the event of the death of Lessee, Lessor may, without notice, immediately terminate this Lease and all Lessee's rights hereunder, and reenter and, in any manner, resume possession of said premises, Lessee hereby waiving all statutory rights inconsistent herewith.

8. The waiver of any breach of any of the provisions hereof shall not be deemed a waiver of any succeeding or other breach.

9. All notices under this Lease shall be duly given if forwarded by registered mail to Lessor, at its above address, or to Lessee, at said premises.

10. The making, execution and delivery of this Lease by Lessee have not been induced by any representations, statements, warranties, or agreements other than those herein expressed. This Lease embodies the entire understanding of the parties hereto, and there are no further or other agreements or understandings, written or oral, in effect between the parties hereto relating to the subject matter hereof; and this Lease cancels and supersedes any lease or other agreement between the parties hereto or their predecessors with reference to possession of said premises by Lessee.

In Witness Whereof, the parties hereto have caused this Lease to be executed the day and year herein first above written.

THE WATER ASSOCIATED OIL COMPANY,
ASSOCIATED DIVISION.

By _____

Lessor.

_____

Witness to Lessee:

Lessee.

[fol. 2496] DEFENDANT EXHIBIT F

Merchandise Agreement

Federal Tires and Tubes, Acro Batteries, Auto Supplies

This Agreement, made this day of , 19 , between TIDE WATER ASSOCIATED OIL COMPANY, a Delaware corporation, Associated Division, hereinafter called "Associated", and hereinafter called "Buyer",

Witnesseth

(1) Products: Associated agrees to sell and deliver to Buyer, and Buyer agrees to purchase from Associated during the term of this Agreement, all tires, tubes, batteries, accessories and/or auto supplies required by Buyer for resale from Buyer's place of business at the address set forth below, and Buyer shall diligently promote the resale of said merchandise to consumers and/or dealers. Merchandise to be sold and delivered to Buyer by Associated hereunder shall be such items as marketed by Associated at time of delivery.

(2) Period: The term of this Agreement shall be from , 19 , until terminated by either party giving to the other at least ten (10) days' prior written notice of such termination.

(3) Price, Terms: Payment shall be made by Buyer for goods purchased hereunder at the prices and discounts applicable to Buyer's class of trade, as established by Associated at time of shipment, which prices, discounts and allowances shall be subject to change without notice, and on terms extended by Associated to Buyer from time to time. A cash discount of two percent (2%) if paid by the tenth day of the month following delivery will be allowed except on items specifically excluded by Associated. Associated may decline to make deliveries except for cash. Upon any termination hereof, any and all sums due Associated hereunder shall immediately become due and payable.

(4) Identification: Buyer shall identify his place of business as a resale outlet for tires, tubes, batteries, accessories

and/or auto supplies, in accordance with Associated's Advertising policy.

(5) Deliveries: Deliveries shall be f. o. b. Associated's point of shipment and the goods shall become the property of the Buyer at time of shipment. Associated shall pay freight to Buyer's place of business on such shipments complying as to quantity with Associated's policy, from time to time. On express shipments of one hundred (100) pounds or more, freight allowance only will be made.

(6) Adjustments: All claim for adjustments or replacements of tires, tubes, batteries, accessories and/or auto supplies shall be in accordance with the procedure established by Associated from time to time.

(7) Returned Merchandise: Tires or tubes returned to Associated by Buyer for exchange shall be of current design only and shall be subject to a handling charge of two and one-half per cent (2½%) of the dealer net cost price for the tires and tubes returned for exchange, in effect at time of such exchange, and such charge shall be paid by Buyer. All products sold to Buyer hereunder are subject to return only upon written request to and approval by Associated. Only merchandise in good condition in original containers and of a current design, size or type will be accepted for return. Associated will charge Buyer a ten per cent (10%) handling fee for all auto supplies, accessories or batteries returned for credit.

(8) Price Protection Federal Tires & Tubes: In case of a decline in Associated's Federal tire and tube "List Prices" which reduces Buyer's net cost, Associated will issue to Buyer a merchandise credit to be available to Buyer during the term of this agreement amounting to the difference if any between the net prices paid and the reduced net prices on all Federal Tires and Tubes of current design invoiced by Associated to Buyer within thirty (30) days next prior to the effective date of such price decline, and that shall remain in the Buyer's stock, on hand and unsold, as of the date of such decline. The term "Net Prices" herein means the prices as specified in "Associated's Federal Tire and Tube List Prices" less all discounts to the Buyer, if any, which may then be in effect.

(9) Force Majeure: Associated shall not be liable for damage because of total or partial interruption of deliveries,

changes in quality or discontinuance of any product, as the result of war, Governmental action, embargo, order, requisition or request of any Governmental or acting authority; acts of God, the elements, fire, storm, flood, strike, industrial disturbance, or accident; inability to secure supplies; failure or impairment of Associated's transportation, or distributing facilities; joinder of Associated in any curtailment, rationing or proration program, whether voluntary or involuntary; or any other causes whatsoever beyond Associated's control, whether or not similar to the foregoing enumerated causes. If any such causes hinder or delay Associated in making deliveries to all its customers, failure to make deliveries to Buyer, in whole or in part, while making deliveries to others, shall not be a violation of this Agreement.

(10) Breach: Breach of any of the terms hereof, or failure to make any payments when due, shall entitle Associated to terminate this Agreement without notice or refuse further deliveries hereunder, whether or not any previous breach has been waived. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior agreements, written or oral, relating to the subject matter hereof.

TIDE WATER ASSOCIATED OIL COMPANY,
ASSOCIATED DIVISION,

By .....

Accepted and Agreed to This
Day of ..... , 19 ...

.....
(Buyer)

.....
(Street)

.....
(City) (State)

[fol. 2497] DEALER SALES AGREEMENT

This Agreement, made this day of , 19 , between Tide Water Associated Oil Company, a Delaware corporation, Associated Division, hereinafter called "Associated", and

(If a partnership, so state, giving names of partners; where trade name, state name of proprietor) hereinafter called "Buyer", (whether one or more),

Witnesseth:

Quantity

1. Associated agrees to sell and deliver to Buyer, and Buyer agrees to purchase from Associated during the term of this Agreement, all gasolines, motor oils and greases required by Buyer during said period for resale from Buyer's

Location

premises located at

(street or location)

City of , County of State of .

Buyer shall not sell or handle any gasolines, motor oils or greases during said period at said premises except gasolines, motor oils or greases purchased hereunder.

Term

2. The term of this Agreement shall be from the day of , 19 , to the day of , 19 , Associated to have the option to extend said period to by sending Buyer written notice at least thirty (30) days before the end of said period. Associated reserves the right to terminate this Agreement at any time in the event Buyer purchases less than gallons of gasoline during any thirty (30) day period. If Buyer occupies the above-described premises under a Lease from Associated, then in that event, notwithstanding anything herein to the contrary, this Agreement shall terminate upon any termination of said lease.

Products

3. The products covered by this Agreement are Associated AroTane Gasoline, Associated Flying A Gasoline, and any other brands of gasoline marketed by Associated; provided, however, that Associated may at any time discontinue the marketing of any brand or grade of gasoline, either generally or in Buyer's territory, in which event Associated and Buyer shall be released from all obligations hereunder relating to the purchase and sale of such brand or grade of gasoline, but no other; Veedol Motor Oils and Greases; and Tydol Motor Oils.

Price

4. Buyer agrees to pay Associated at time of delivery (or, if credit is extended, on date when due), for all deliveries hereunder, the price including taxes, posted by Associated at the time and for the place of delivery, governing sales of like products to Buyer's class of trade.

Credit of Buyer

5. Buyer shall make payments hereunder on such terms as Associated may specify from time to time, and if Buyer fails to do so then, at Associated's option, all sums owing hereunder shall immediately become due and payable, and Associated may terminate this Agreement or refuse all further deliveries hereunder.

Resale Price

Pursuant to the Fair Trade Act of the State in which delivery is made hereunder, Buyer agrees not to sell or to offer or advertise for sale any products purchased hereunder at less than Associated's posted authorized selling price for said products and type of sale in effect at time and place of resale.

Breach

7. Associated, at its option, may terminate this Agreement at any time without notice, or refuse deliveries hereunder, if buyer breaches any of the provisions hereof. Such termination shall be exclusive of and in addition to any other remedy which Associated may have against Buyer for said breach. Waiver of any breach shall not be construed as a waiver of any other or successive breach hereof.

Claims

8. Buyer waives any claim against Associated as to price or quantity of any delivery of products hereunder, unless such claim is made by Buyer to Associated in writing within forty-eight (48) hours after such delivery.

Conditions

9. The conditions printed on the reverse hereof are hereby incorporated in and made a part of this Agreement.

Tidewater Associated Oil Company
Associated Division

By

Witness Buyer

[fol. 2498] S. S.

Petroleum Products Sales Agreement

This Agreement, made this day of 19 , between Tide Water Associated Oil Company, a Delaware corporation, Associated Division, hereinafter called "Associated", and

(If a partnership, so state, giving names of partners;

where trade name, state name of proprietor)
hereinafter called "Buyer", (whether one or more),

Witnesseth:

Quantity

1. Associated agrees to sell and deliver to Buyer and Buyer agrees to purchase from Associated during the term of this Agreement, all petroleum products required by Buyer during said period for resale from Buyer's premises located at:

Location

(Street or location):
City of , County of , State of

Buyer shall not sell or handle any petroleum products

during said period at said premises except those purchased hereunder.

Term

2. The term of this Agreement shall be for a period of one (1) year, commencing on the day of , 19, and from year to year thereafter; provided, however, that either party may terminate this Agreement at the end of any calendar month of the term, or extended term, hereof by giving the other at least thirty (30) days prior written notice. Upon any termination hereof, any and all sums due Associated hereunder shall immediately become due and payable by Buyer to Associated.

Products

3. The Products covered by this Agreement include, but are not limited to: Associate Arotane Gasoline, Associated Flying A Gasoline, and Associated White Gold Gasoline, and any other brands of gasoline marketed by Associated in Buyer's territory, provided, however, that Associated may at any time discontinue the marketing of any brand or grade of gasoline, either generally or in Buyer's territory, in which event Associated and Buyer shall be released from all obligations hereunder relating to the purchase and sale of such brand or grade of gasoline, but no other; Veedol Motor Oils and Greases; Tydol Motor Oils; and such other petroleum products as may be marketed generally by Associated in Buyer's territory.

Price

4. Buyer agrees to pay Associated at time of delivery (or, if credit is extended, on date when due), for all deliveries hereunder, the price, including taxes, posted by Associated at the time and for the place of delivery, governing sales of like products to Buyer's class of trade generally. Any tax levied by governmental authority except as already herein provided for and in any manner affecting sale or delivery hereunder shall be added to said price and shall be paid by Buyer.

Resale Price

5. Pursuant to the Fair Trade Act of the State in which delivery is made hereunder, Buyer agrees not to sell or to offer or advertise for sale any products purchased hereunder

at less than Associated's posted authorized selling price for said products and type of sale in effect at time and place of resale.

Claims

6. Buyer waives any claim against Associated as to price or quantity of any delivery of products hereunder, unless such claim is made by Buyer to Associated in writing within forty-eight (48) hours after such delivery.

Force Majeure

7. Associated shall not be liable for damages because of total or partial interruption of deliveries, changes in quality or discontinuance of any of its products, or type or size of containers, as the result of war, Governmental action, embargo, order, requisition or request of any Governmental or acting authority; restraints of rulers or princes; acts of God, the elements, fire, storm, flood, strike; industrial disturbance, or accidents; inability to secure supplies in the open market; failure or impairment of Associated's production, transportation, manufacturing or distributing facilities; joinder of Associated in any curtailment, rationing or proration program, whether voluntary or involuntary; or any other causes whatsoever beyond Associated's control, whether or not similar to the foregoing enumerated causes. Buyer may purchase elsewhere, but without recourse on Associated, any product which Associated fails to deliver because of any such causes. Upon cessation of such causes, deliveries shall be resumed hereunder, but not beyond the period hereof, nor, except by mutual agreement, in any greater amounts than required to be delivered during the unexpired period of the contract, excluding amounts undelivered during the period Associated is excused from making deliveries. If any such causes hinder or delay Associated in making deliveries to all its customers, failure to make deliveries to Buyer, in whole or in part, while making deliveries to others, shall not be a violation of this contract and Associated may apportion its available supply among its customers in any manner it shall deem best.

Deliveries

8. Deliveries shall be made in fairly equal quantities and Associated reserves the right to refuse deliveries in abnor-

mal quantities or in quantities in excess of Buyer's usual requirements. The quantity of each delivery of gasoline by Associated hereunder shall be established and fixed by the volumetric measurement, at the time of such delivery, of the containers from or into which delivery is made by meter attached to the delivery equipment. Said quantity shall be shown on delivery ticket issued by Associated covering such delivery, and shall be accepted as final by both parties.

Brands

9. Buyer agrees to resell products purchased hereunder only under Associated's names, trade marks and brands, and through pumps and containers properly marked with said names, trade marks and brands. Associated in its uncontrolled discretion, may at any time change the quality, brand name or any distinctive designation of any of its products. Should it do so, this contract shall be deemed to cover products of the new names or designations to the same extent as if said names or designations were specifically set forth herein.

Conduct of Business

10. Nothing herein contained shall be construed as reserving to Associated any right to direct or control Buyer in the conduct of his business hereunder. All persons working for Buyer shall be employees of Buyer and not of Associated, and Associated reserves no right to exercise any control over such employees. Buyer agrees that he will at his own expense secure and maintain at all times during the period hereof full insurance under any Workmen's Compensation Law effective in Buyer's State, covering Buyer's employees, and, upon request, shall furnish Associated with evidence of such insurance. Buyer accepts exclusive liability for all contributions and payroll taxes, both State and Federal, as to all employees engaged in the performance of work in connection with Buyer's business. Buyer agrees to conduct his business in compliance with all governmental laws, ordinances and regulations.

Signs.

11. Upon the termination of this Agreement, Associated shall have the right at its option, to enter upon said property and to remove, paint out, or obliterate any signs, sym-

bols, or colors on said property or on the buildings or equipment thereon which might denote that Associated's products are being handled thereat.

Breach

12. Associated, at its option, may terminate this Agreement at any time without notice, or refuse deliveries hereunder, if Buyer breaches any of the provisions hereof, or fails to make any payment when due. Such termination shall be exclusive of and in addition to any other remedy which Associated may have against Buyer for said breach. Waiver of any breach shall not be construed as a waiver of any other or successive breach hereof.

General Provisions

13. Time is of the essence of this Agreement. This Agreement supersedes all agreements of a prior date between the parties hereto or their predecessors in interest, relating to the subject matter hereof, and releases the parties from any and all past or future obligations, claims or liabilities thereunder, excepting only that Buyer agrees to pay Associated in accordance with its delivery tickets or statements rendered for all products delivered to Buyer thereunder. This Agreement shall not be assigned by Buyer, or by operation of law, without Associated's prior written consent. Consent to any assignment shall not be construed as consent to any further assignment. This instrument contains the entire contract and understanding between the parties and there are no oral promises, representations or warranties affecting same. Subject to the provisions of this paragraph, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Captions used herein are incomplete indices only and are not to be considered a part of, nor to be used in construing, this Agreement or any provision thereof.

Tide Water Associated Oil Company
Associated Division

By .....

.....

Witness. Buyer.

[fol. 2499] DEFENDANT EXHIBIT G

EAH:vcm 4/13/48

1. In which of the following states are petroleum products (gasoline, lub. oil, greases, etc.) and/or tires, tubes, batteries and/or other automotive accessories sold *at retail* by or for the company through employees, agents and/or dealers:

California
Oregon
Washington
Arizona
Nevada
Utah
Idaho

The Shell brand of products are sold either through Company-operated service stations or by dealers in all of these States.

[fol. 2500] EAH:vcm 4/20/48

2. What was the maximum number *in each such state* of the following:

(a) Company-operated service stations
(b) *Retail* dealers and *retail* agents handling the company's branded products.

during each of the following years:
1937 to 1946 inclusive.

See attachment.

[fol. 2501]

	California		Oregon		Washington		Arizona		Nevada		Utah		Idaho	
	Co. Oper.	Dlrs.	Co. Oper.	Dlrs.	Co. Oper.	Dlrs.	Co. Oper.	Dlrs.	Co. Oper.	Dlrs.	Co. Oper.	Dlrs.	Co. Oper.	Dlrs.
1937	24	2,540*	#	#	11*	618*	#	#	1	127	...	#	....	#
1938	159	2,441*	#	#	11*	602*	...	268	....	127	...	#	...	#
1939	258	2,480*	#	#	51*	733*	5	266	6	121	...	#	...	#
1940	258	2,420	34*	619*	51*	894*	5	284	6	130	...	159	...	#
1941	296	2,307	42	800	76	998	8	298	6	130	...	167	...	231
1942	361	2,084	40	711	104	928	17	295	7	121	...	166	...	230
1943	316	1,846	37	599	77	773	7	212	7	91	...	139	...	213
1944	183	1,827	23	585	58	765	7	214	5	81	...	126	...	174
1945	138	1,912	11	644	29	813	5	239	4	84	...	136	...	167
1946	116	2,027	12	664	19	810	3	267	4	91	...	150	...	193

(*) Based upon information available, known to be incomplete.
(#) Information not available.

[fol. 2504] EAH:vcm 4/13/48

4. Is the company's branded *gasoline* sold at *retail* in any of these states through *retail* dealers or *retail* agents who handle the gasoline of other suppliers? If so, state the approximate number of such so-called split pump stations handling the company's gasoline in each such state for 1946 or according to the company's latest available figures.

As of August 31, 1947, there were eight split pump stations, all of which were in the State of Idaho.

DEFENDANT EXHIBIT NO. H

DO 5002 2M Sets 6-29 Printed in U.S.A.

1— To DIVISION OFFICE

SHELL OIL COMPANY
INCORPORATED

APPLICATION FOR SHELLUBRICATION DEALER'S LICENSE

Depot_____ Division_____ Date_____ 19____

Name of Account_____ Street Address_____

City_____ State_____ Number_____

Type of Account: Service Station ☐ Super Service Station ☐ Garage ☐

New Car Dealer ☐ Parking Lot ☐

Permanently Established: Yes ☐ No ☐. Under present management_____Years, _____Months

Present Monthly Average: _____Gals., _____Gals., _____Lbs., $_____|_____Jobs
Gasoline Motor Oils Gear Oils and Greases Lubrication

Competitive Products in Stock: _____Gals., _____Lbs. Will be disposed of within 30
Motor Oils Gear Oils and Greases

days: Yes ☐ No ☐. If not, explain:_____

_____

_____

Dealer has or will obtain, before being identified as a Shellubrication Dealer, tools and equipment *equivalent* to those listed on the reverse side hereof, except as noted. Yes ☐ No ☐.

Explain major exceptions:_____

_____

_____

Dealer has or will obtain, before being identified as a Shellubrication Dealer, tools and equipment *equivalent* to those listed on the reverse side hereof, except as noted. Yes ☐ No ☐.

Explain major exceptions:_____

_____

_____

Dealer has, or will obtain, before being identified as a Shellubrication Dealer, and will *maintain* stocks of SHELL Automotive Lubricants as outlined on the reverse side hereof.
Licensing this dealer will not affect an *existing* or *projected* company station.
Dealer has the *desire* and the *ability* to observe *all* provisions of the Shellubrication Dealer's License Agreement in such a manner that Shellubrication as offered by him will not reflect on the quality of the service as offered by our own stations.

_____ ____/____/____
Local Manager Date

APPROVED:

_____ ____/____/____
Shellubrication Salesman Date

_____ ____/____/____
Division Sales Manager Date

Shellubrication License Agreement Number_____ granted.

2505

(OVER)

[fol. 2502] EAH:vcm 4/20/48

3. What was the

(a) gallonage of company's gasoline

(b) gallonage of company's lub oil

(c) dollar retail price of tires and tubes

(d) dollar retail price of batteries

(e) dollar retail price of other automotive accessories.

sold at *retail* in each such state during *each* of the years 1937 to 1946 inclusive by company-operated service stations and *retail* dealers and *retail* agents handling the company's branded products.

See attachment.

(Here follows 1 Photolithograph, side folio 2503)

GASOLINE - (Gallons)

State	1946	1945	1944	1943	1942
Nevada	6,812,004	4,539,654	2,167,803	2,370,090	3,526,243
Arizona	17,138,811	11,327,349	**	**	**
Utah	8,107,078	5,554,880	4,552,189	4,676,232	5,153,961
New Mexico	928,877	562,707	**	**	**
California	218,089,087	145,722,930	100,584,442	109,827,320	*70,857,199
Idaho	6,816,857	4,674,105	3,970,409	3,986,025	5,158,717
Washington	30,789,500	35,895,231	27,820,393	30,192,781	36,256,284
Oregon	46,351,367	28,966,152	21,499,756	23,817,935	29,106,918
	306,932,781	237,243,008	160,194,992	176,872,383	150,061,321

GASOLINE - (Gallons)

	1942	1941	1940	1939	1938	1937
Nevada	3,526,243	4,479,861	4,360,332	4,251,296	***	***
Arizona	**	11,395,270	10,304,825	**	**	**
Utah	5,153,961	6,521,161	6,329,518	6,854,106	***	***
New Mexico	**	684,412	635,680	**	**	**
California	*70,857,199	*84,291,049	*81,621,329	*	*	*
Idaho	5,158,717	6,521,455	6,281,999	1,986,124	2,019,780	[illegible]
Washington	36,256,284	46,373,462	43,716,043	43,542,060	44,298,535	[illegible]
Oregon	29,106,918	37,057,710	33,689,668	32,190,303	32,647,775	[illegible]
	150,061,321	197,264,380	187,338,594	88,822,889	78,964,090	[illegible]

* Southern Calif. Div. sales for California not available.
** Arizona Div. sales for Arizona & New Mexico not available.
*** Figures not available

IRRIGATION OIL - (Gallons)

	1947	1946	1945	1944
Nevada	131,021	95,281	**	
Arizona	369,578	258,323	**	
Utah	189,718	150,760		127,079
New Mexico	18,671	12,786	**	
California	4,033,643	2,985,900		2,127,878
Idaho	176,489	119,182		108,744
Washington	1,086,849	793,805		612,239
Oregon	896,720	581,777		457,578
	6,872,680	4,977,858		3,413,521

** Figures not available.

STOVE AND [illegible]
[illegible]

	1947	1946	1945	1944
	$ 19,334	$ 17,[illegible]334	$ 17,603	(1)
	6,251	8,[illegible]251	8,765	(1)
	-	-	-	-
	-	-	-	-
	582,861	305,[illegible]861	305,942	(2)206,857
	-	-	-	-
	33,160	28,[illegible]160	28,369	45,971
	57,216	33,[illegible]216	33,376	37,748
	$ 698,822	$ 393,[illegible]822	$ 394,675	$ 290,586

STOVE AND [illegible] - SOLD TO DEALERS
(No only persons they supply & do not know prices)

	1947	1946	1945	1944
	$ 32,589	$ 18,122		
	50,846	45,873		
	46,317	24,483		
	-	-		
	2,633,827	1,238,[illegible]		
	75,682	[illegible]		
	400,093	176,[illegible]		
	368,865	214,[illegible]		
	$3,[illegible]3,419	$1,713,[illegible]		

KEROSENE
[illegible] SERVICE STATIONS ONLY

	1947	1946	1945	1944
Nevada	$ 3,261	$ 4,143	(1)*	
Arizona	3,234	2,938	(1)	
Utah	-	-	-	
New Mexico	-	-	-	
California	134,407	75,755	(2)	57,934
Idaho	-	-	-	
Washington	9,528	7,510		14,212
Oregon	8,777	4,219		3,053
	$ 159,159	$ 94,565		$ 81,199

** Figures not available.

KEROSENE
(No only persons they [illegible]

	1947	1946	1945	1944
	$ 1,494	$ [illegible]494	$ 1,192	(5)*
	15,732	[illegible],732	13,945	(5)
	3,682	[illegible],682	2,388	
	-	-	296	
	318,945	[illegible],945	228,601	147,434
	4,222	[illegible],222	402	
	45,867	[illegible],867	37,748	48,322
	[illegible]	[illegible]	[illegible]	[illegible]
	$ [illegible]	$ [illegible]	$ 324,372	$ 203,452

KEROSENE - SOLD TO DEALERS
(persons they supplied & do not know prices)

	1947	1946	1945	1944
	$ 8,220	$ [illegible]277		
	4,249	[illegible]456		
	-	-		
	-	-		
	249,470	118,[illegible]472		
	-	-		
	41,297	[illegible]899		
	[illegible]	[illegible]		
	$ [illegible]	$ [illegible]		

KEROSENE
(No only persons they [illegible]

	1947	1946	1945	1944
	$ 2,693	$ [illegible]	$ 4,779	$
	19,071	[illegible]	7,615	
	-	-	9,977	
	-	-	-	
	481,264	[illegible]	293,720	91,880
	1,734	[illegible]	-	-
	53,126	[illegible]	33,494	36,381
	[illegible]	[illegible]	[illegible]	14,728
	$ 615,495	$ [illegible]	$ 775,080	$ 144,989

KEROSENE - SOLD TO DEALERS
(persons they supplied & do not know prices)

	1947	1946	1945	1944
	$ [illegible]	$ [illegible]		
	[illegible]	[illegible]		
	[illegible]	[illegible]		
	[illegible]	[illegible]		
	[illegible]	[illegible]		
	[illegible]	[illegible]		
	[illegible]	[illegible]		
	[illegible]	[illegible]		
	$ [illegible]	$ [illegible]		

NOTES:
(1) [illegible]da and Arizona not available.
(2) Sacramento and Arizona Divisions - figures not available.
(3) [illegible] figures not available
(4) Sacramento & Arizona figures for California not available.
(5) Not available.

RECOMMENDED LIST OF TOOLS AND EQUIPMENT FOR SHELLUBRICATION DEALERS

This list constitutes a general guide only and purposely makes no reference to any particular brand or style of equipment.

Minimum Quantity	ITEM
1	Hoist or rack.
1	Air compressor, of sufficient size to operate lift, etc.
....	Pipe, hoses and fittings for transmitting compressed air throughout lubratorium.
1	Electric lights and sockets in lubratorium.
1	Electric extension light.
1	Cabinet or wallboard for small tools and fittings.
1	Board, gun rack or cabinet for displaying and/or storing lubricating guns.
....	Sufficient hi-boys to provide for seasonal grades of Golden Shell Motor Oil and Shell Flushing Oil.
1	Suction oil gun with small flexible nozzle. (Wet clutches, shock absorbers.)
1	Suction oil gun with large flexible nozzle. (Transmission overdrives, etc.)
1	Intermediate pressure hand gun with acorn nozzle. (Wheel bearings)
1	High pressure hand gun with Zerk end. (Water pumps)
1	Intermediate pressure lubricator assembly or hand gun with oil nozzle and hydraulic to pin type adapter. (For applying Shell Super Gear Lubricant SAE 140 EP to oil type shackles and universals)
1	Intermediate pressure lubricator assembly or hand gun with long adapter and acorn type nozzle. (For applying Shell Universal Joint Lubricant)
1	Low pressure oil gun with non-drip nozzle. (Steering gears)
1	High pressure lubricator assembly, or power gun, or hand gun, with whip end hose assembly; Straight Zerk adapter, and hydraulic adapter. (Chassis fittings, grease lubricated)
....	Shell Spring Servicing Equipment, or equivalent.
1	Grease dispenser, or hand gun, and Lubroclamp. (Covered springs)
1	Spring spray gun, air or hand operated.
1	Gun for applying Shell Spring Lubricant to Ford and Lincoln-Zephyr grooved springs.

SAE 140 EP to oil type shackles and universals)
1 Intermediate pressure lubricator assembly or hand gun with long adapter and acorn type nozzle. (For applying Shell Universal Joint Lubricant)
1 Low pressure oil gun with non-drip nozzle. (Steering gears)
1 High pressure lubricator assembly, or power gun, or hand gun, with whip end hose assembly; Straight Zerk adapter, and hydraulic adapter. (Chassis fittings, grease lubricated)
.... Shell Spring Servicing Equipment, or equivalent.
1 Grease dispenser, or hand gun, and Lubroclamp. (Covered springs)
1 Spring spray gun, air or hand operated.
1 Gun for applying Shell Spring Lubricant to Ford and Lincoln-Zephyr grooved springs.

Minimum Quantity	ITEM
2	½ Pint oil cans. (Plews or similar type)
4	Portable hand or pneumatic gear lubricant dispensers. (Shell Transmission Oil SAE 140, Shell Super Gear Lubricants SAE 90 EP and SAE 140 EP, Shell Hypoid Gear Lubricant SAE 90 EP)
2	Swing spout or equivalent measures.
1	1 Pint funnel measure for wet clutches.
1	Gear flusher, air or electric operation, or suitable hand operated suction gun with flexible nozzle.
1	Vacuum cleaner. (Optional but desirable)
....	Sufficient repair parts to keep all hand and power guns in usable state of repair.
1	Putty knife (for springs, etc.)
1	Wire brush.
2	Pliers. (One water-pump)
2	Screwdrivers. (One shock absorber)
2	Crescent or equivalent wrenches.
1	12" Monkey wrench. (Wheel bearings, etc.)
1	Hammer.
1	Shackle bar—forked.
1	Socket wrench set or assorted open end wrenches.
1	Wrench set. (Spark plugs)
1	Hudson-Essex Terraplane wet clutch wrench.
1	Alemite drive tool. (To fit straight and angle fittings)
1	Drain plug wrench.
1	5-in-1 tool for extracting fittings and re-threading holes.
....	Assorted supply of lubricating fittings for resale and replacement purposes.
1	Set of Shell type seat, fender, steering wheel and lever covers.
1	Waste oil tank meeting local ordinances and requirements.
1	Cold chisel.
1	Battery service equipment, consisting of battery brush, carrier, filler, pliers and hydrometer.
1	Shellubrication Sales Work Board.

RECOMMENDED STOCK OF SHELL AUTOMOTIVE LUBRICANTS FOR SHELLUBRICATION DEALERS

Minimum Quantity	LUBRICANT	
25-lb. Package	Shell Super Chassis Lubricant	
5-lb. Package	Shell Wheel Bearing Grease	
5-lb. Package	Shell Steering Gear Lubricant E.P.	
5-lb. Package	Shell Universal Joint Lubricant	
1-lb. Package	Shell Waterproof Grease	
25-lb. Package	Shell Spring Stabilizing Compound	
2 Gallons	Shell Spring Lubricant	
5 Gallons	Golden Shell Motor Oil 10W (Winter Season)	As required by reason of climate
5 Gallons	Golden Shell Motor Oil 10 (20W Winter Season)	As required by reason of climate
5 Gallons	Golden Shell Motor Oil 20	
5 Gallons	Golden Shell Motor Oil 30	
5 Gallons	Golden Shell Motor Oil 40	
5 Gallons	Golden Shell Motor Oil 50	For Overdrive Transmissions
1 Gallon	Golden Shell Motor Oil 70	For Overdrive Transmissions

Minimum Quantity	LUBRICANT
50 lb. Package	Shell Transmission Oil SAE 90
50 lb. Package	Shell Transmission Oil SAE 140
50 lb. Package	Shell Super Gear Lubricant SAE 90 EP
50 lb. Package	Shell Super Gear Lubricant SAE 140 EP
30 lb. Package	Shell Hypoid Gear Lubricant SAE 90 EP
5 Gallons	Shell Flushing Oil
1 Gallon	Shell Shock Absorber Oil No. 1
1 Gallon	Shell Shock Absorber Oil No. 2
1 Gallon	Shell Shock Absorber No. 4
1 Gallon	Shell Wet Clutch Oil
1 Gallon	Shell Handy Oil
1 Gallon	Shell Valve Lubricant
1 Gallon	Shell Spring Oil
2 Sticks	Shell Door Ease

(Here follow 4 Photolithographs, side folios 2505, 2506, 2507 2508)

BU 5610 (M 5174) PRINTED IN U S A

1 TO DIVISION OFFICE

SHELLUBRICATION DEALER'S LICENSE AGREEMENT

No. 6399

THIS AGREEMENT made this ..... day of ..... , 19 .....

by and between SHELL OIL COMPANY, Incorporated, hereinafter called "SHELL," and .....

hereinafter called "DEALER":

WITNESSETH:

1. SHELL hereby grants to DEALER a non-exclusive, non-transferable license to use "Shellubrication—The Modern Upkeep Service," together with the right to use such materials, forms and records in connection with said service as may from time to time be specified by SHELL. The license herein granted applies only to the following described place of business, hereinafter referred to as the "premises":

Street Address ..... City ..... State .....

2. "Shellubrication" is a lubrication service for the application to automobiles of automotive lubricants including the use of "Shellubrication" Guide, "Shellubrication" Receipts, advertising signs and materials and such other standard forms and records as may be required by Shell. The term "Shellubrication" includes the maintenance of a standard set of equipment and the adoption of a standard method of applying automotive lubricants.

3. The efficient operation of "Shellubrication" requires the use of the advertising and sales promotional materials, and the forms listed in Appendices "1" and "2," which are a part hereof. The advertising and sales promotional material listed in Appendix "1" will be loaned Dealer by Shell. Shell will endeavor at all times to have the forms specified as a part of "Shellubrication" and listed in Appendix "2," available to Dealer. All such materials, forms and records shall be used exclusively in connection with the use of "Shellubrication." Title to all materials, forms and records furnished or loaned hereunder by Shell shall at all times remain in Shell and Shell shall have a right of examination thereof and access thereto at all reasonable times and upon the expiration or sooner termination of this agreement, shall have the right to remove all of said materials, forms and records, and Dealer agrees to provide the proper means for Shell to do so. Dealer shall be responsible for any injury or damage to any materials, forms or records which is not caused by ordinary usage while in Dealer's possession.

4. DEALER, at his sole expense, agrees to maintain in first-class condition at the said premises an adequate set of all equipment required for the proper and efficient lubrication of motor vehicles and to supplement such equipment with any new or different equipment as may, from time to time, be designated by Shell as necessary to lubricate adequately new models of motor vehicles.

5. DEALER shall indemnify and hold SHELL harmless from and against any and all liability for loss or damage to property of whatsoever kind, or for injury to or death of any person or persons arising out of or in any way

...with the use of "Shellubrication." Title to all materials, forms and records furnished or loaned hereunder by Shell shall at all times remain in Shell and Shell shall have a right of examination thereof and access thereto at all reasonable times and upon the expiration or sooner termination of this agreement, shall have the right to remove all of said materials, forms and records, and Dealer agrees to provide the proper means for Shell to do so. Dealer shall be responsible for any injury or damage to any materials, forms or records which is not caused by ordinary usage while in Dealer's possession.

4. DEALER, at his sole expense, agrees to maintain in first-class condition at the said premises an adequate set of all equipment required for the proper and efficient lubrication of motor vehicles and to supplement such equipment with any new or different equipment as may, from time to time, be designated by Shell as necessary to lubricate adequately new models of motor vehicles.

5. DEALER shall indemnify and hold SHELL harmless from and against any and all liability for loss or damage to property of whatsoever kind, or for injury to or death of any person, or persons, arising out of or in any way connected with the installation, use and/or maintenance of "Shellubrication" and/or all materials, forms or records furnished or used in connection therewith or in any wise arising out of any acts committed or omitted upon said premises.

6. DEALER agrees to use, advertise and display only lubricating oils and greases obtained from Shell in connection with the performance of "Shellubrication" service and for this purpose DEALER agrees to keep on hand at all times and to display a representative stock of automotive lubricants acquired from Shell as listed in Appendix "3" which is a part hereof.

7. Should DEALER at any time fail to abide by or comply with any of the terms or provisions of this agreement, SHELL may, at its election, cancel this contract. The waiver of any breach hereunder will not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or different provision of this agreement. The remedies hereunder afforded SHELL are cumulative and shall not be deemed to deprive SHELL of any other remedy given to SHELL by law.

8. No prior stipulation, agreement or understanding of the parties or their agents in respect to the subject matter of this contract, whether written or oral, express or implied, shall be valid or enforceable unless embodied in this contract or covered by these provisions.

9. Nothing herein shall be deemed as constituting DEALER the agent of SHELL.

10. This agreement shall rema'n in full force and effect until terminated by either party giving to the other written notice at least ten days prior to the time such termination is to become effective.

11. This agreement or any modification thereof shall not be binding upon SHELL until approved and signed on its behalf by a duly authorized employee. Commencement of performance hereunder prior to approval and signing as above stipulated in no case shall be construed as a waiver by SHELL of this requirement.

APPROVED:

_____
Local Manager.

_____
Division Merchandising Instructor.

_____

_____
Dealer.

SHELL OIL COMPANY, Incorporated

By _____

2507

all of its properties at any time, without recourse to any legal proceedings.

This assent shall likewise apply to any and all additional equipment belonging to Shell installed on said premises.

Witness the hand and seal of such owner this ..... day of ....., 19 ..

..... (Owner)

By .....

Witness: .....

[fol. 2513]

Depot .....
Division .....

100% Dealer Gasoline Contract

This Agreement, made this ..... day of ....., 19 .., between Shell Oil Company, Incorporated, a corporation, hereinafter called "Shell," and .....

hereinafter called "Buyer,"

Witnesseth:

1. Product and Quantity: Shell agrees to sell to Buyer and Buyer agrees to buy from Shell all gasoline and motor fuel hereinafter called "gasoline" which Buyer may require for resale at Buyer's premises situate at .....

Buyer shall not store or sell, or advertise or offer for sale, any gasoline on or from said premises, or on or from any property adjacent thereto, except as acquired from Shell.

2. Grade and Brand: The grade or grades and brand or brands of gasoline to be delivered hereunder shall be the grade or grades and brand or brands of gasoline which Shell is, at the time of delivery, selling at its distributing plant at .....
Shell shall have the absolute right, from time to time, to change the quality of its several brands of gasoline and to change the name or names of each thereof.

3. Deliveries. Deliveries shall be made by Shell by tank truck to Buyer's said premises within a reasonable time after the receipt of Buyer's orders therefor, due considera-

RECORD

P.1538 D-1569

tion being given to Shell's general distributing operations. Shell shall not be responsible for any failure or delay in making deliveries due in whole or in part, directly or indirectly, to any cause or condition of whatsoever nature or description beyond Shell's control.

4. Price and Terms: For all gasoline delivered hereunder Buyer shall pay to Shell, in cash on delivery, Shell's dealer net price for gasoline of like grade and quality delivered by tank truck to resellers coming within the same class and delivery area as Buyer, all as shown on the price schedules posted by Shell on date of delivery hereunder at its said distributing plant. Should Shell extend credit to Buyer, the extension thereof shall not be deemed a waiver of Shell's right, at any time without notice, to require payment to be made in cash on delivery.

5. Resale Price: Buyer shall not sell, offer or advertise for sale any gasoline delivered by Shell hereunder at any price lower than Shell's retail price for gasoline of like grade and brand posted by Shell at its said distributing plant at the time of resale of such gasoline. Buyer shall not grant any rebates, discounts or concessions or resort to any device whatsoever whereby any purchaser may obtain such gasoline at a lower net price than Shell's said retail price posted as aforesaid.

6. Breach of Contract: Should Buyer at any time fail to abide by or comply with any of the terms or provisions of this contract, Shell may, at its election, suspend deliveries hereunder or may, at its election, cancel this contract. The waiver of any breach hereunder will not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this contract. The remedies herein afforded Shell are cumulative and shall not be deemed to deprive Shell of any other remedy given to Shell by law.

7. Trademarks and Trade Names: Buyer may use the trademarks, trade colors and trade names of Shell to identify and advertise the products purchased hereunder, but shall not use the same for any other purpose or in connection with the sale of any other products. At the termination of this contract Buyer shall discontinue the use of

RECOMMENDED LIST OF TOOLS AND EQUIPMENT FOR SHELLUBRICATION DEALERS

This list constitutes a general guide only and purposely makes no reference to any particular brand or style of equipment.

1 Hoist or rack.

1 Air compressor of sufficient size to operate hoist, etc.

1 Waste oil tank meeting local ordinances and requirements.

Electric lights and sockets in lubritorium.

1 Cabinet or wallboard for small tools and fittings.

1 Board, gun rack or cabinet for displaying and/or storing lubricating guns.

Sufficient hi-boys or other means to provide for seasonal grades of Golden Shell Motor Oil and Shell Donax F (Flushing Oil).

1 Suction oil gun with large flexible nozzle. (Transmission overdrives.)

1 Intermediate pressure hand gun with acorn nozzle for applying Shell Retinax H (Wheel Bearing Grease).

1 High pressure hand gun with hydraulic adaptor for applying Shell Retinax P (Waterproof Grease).

1 Intermediate pressure lubricator assembly or hand gun with hydraulic adapter for applying Shell Retinax C (Chassis Lubricant) to fittings.

1 Intermediate pressure lubricator assembly or hand gun with long adapter and acorn type nozzle for applying Shell Retinax J (Universal Joint Lubricant).

1 Low pressure oil gun with non-drip nozzle for applying Shell Spirax 140 EP (Gear Lubricant) in steering gears.

1 High pressure lubricator assembly, or power gun, or hand gun, with necessary adapters. (Chassis fittings, grease lubricated.)

Necesary adapters for all fittings.

1 Spring spray gun.

1 Lubroclamp. (Covered springs.)

1 Jack. (Spring lubricating).

1 Wheel bearing packer.

1 Air blow gun.

4 One-half pint oil cans. (Plews or similar type).

3 Gear lubricant dispensers. Shell Spirax 80 EP, 90 EP, 140 EP (Gear Lubricants).

2 Swing spout or equivalent measures.

1 Gear flusher, air or electric operation. (Suitable hand-operated suction gun with flexible nozzle may be used.)

Sufficient repair parts to keep all hand and power guns in usable state of repair.

1 Putty knife. (For springs, etc.)

1 Wire brush.

2 Pliers. (One water-pump and one straight.)

1 Diagonal cutter, 6-inch.

3 Screwdrivers. (One offset and one Phillips.)

2 Crescent or equivalent wrenches.

1 12-inch monkey wrench. (Wheel bearings, etc.)

1 Hammer.

1 Shackle bar. (Forked.)

1 Socket wrench set or assorted open end wrenches.

1 Wrench set. (Spark plugs.)

1 Hudson wet clutch wrench.

1 Tool for removing retainer washers. (Front wheel bearings.)

2 Drain plug wrenches. (One Ford type and one combination.)

1 Five-in-one tool for extracting fittings and re-threading holes.

Assorted supply of lubricating fittings for resale and replacement purposes.

1 Set of Shell recommended type seat, fender, steering wheel and lever covers.

1 Cold chisel.

1 Battery service equipment, consisting of battery brush, carrier, filler, pliers and hydrometer.

Shellubrication clip boards. (Variable with sale volume.)

1 Brush for cleaning wheel bearings.

1 Brush, push. (Grease sweep.)

APPENDIX No. 1

1 Spring spray gun.

1 Lubroclamp. (Covered springs.)

1 Jack. (Spring lubricating).

1 Wheel bearing packer.

1 Air blow gun.

APPENDIX No. 1

Sales promotional material loaned to Dealer by Shell

Quantity	Item	Memo Charge
1	Shellubrication Guide & Service Instructions Serial No. _____	$ 20.00
1	Shellubrication Sign ..... Size	.....
1	Binder for Shellubrication Service Instructions and Bulletins	2.50
1	Shell Automotive Recommendation Chart	.....
1	Shellubrication Follow-up system File Box	5.00
1	Set Index Cards A to Z	2.00
1	Shellubrication Diagram Holder	2.00

APPENDIX No. 2

wheel and lever covers.

1 Cold chisel.

1 Battery service equipment, consisting of battery brush, carrier, filler, pliers and hydrometer.

Shellubrication clip boards. (Variable with sale volume.)

1 Brush for cleaning wheel bearings.

1 Brush, push. (Grease sweep.)

APPENDIX No. 2

Forms to be supplied to Dealer by Shell

Form No.	Form Name
SS 12	Shellubrication Receipts
SS 45	Shellubrication Follow-up Sales Records
SS 20	Shellubrication Follow-up Postcards
CX 37	Shell Lubrication Record Stickers
	Metal Index Tabs—Red and Green

APPENDIX No. 3

Minimum Quantity of lubricants to be maintained by Dealer

35-lb. Package Shell Retinax C (Chassis Lubricant)

10-lb Package Shell Retinax H (Wheel Bearing Grease)

10-lb. Package Shell Retinax J (Universal Joint Lubricant).

1-lb. Package Shell Retinax P (Waterproof Grease)

5 Gallons Golden Shell Motor Oil 10W (Winter Season)
5 Gallons Golden Shell Motor Oil 10 (20W Winter Season)
} As required by reason of climate

5 Gallons Golden Shell Motor Oil 20

5 Gallons Golden Shell Motor Oil 30

5 Gallons Golden Shell Motor Oil 40

5 Gallons Shell Donax F (Flushing Oil)

35-lb. Package Shell Spirax 80 EP (Gear Lubricant)

35-lb. Package Shell Spirax 90 EP (Gear Lubricant)

35-lb. Package Shell Spirax 140 EP (Gear Lubricant)

1 Gallon Shell Donax A 1 (Shock Absorber Oil)

1 Gallon Shell Donax A 4 (Shock Absorber Oil)

1 Gallon Shell Donax H (Handy Oil)

1 Gallon Shell Donax U (Upper Cylinder Lubricant)

1 Gallon Shell Donax P (Penetrating Oil)

1 Gallon Shell Donax R (Rubber Lubricant)

2 Sticks Shell Retinax K (Dry Stick Lubricant)

trademarks, trade colors and trade names of Shell. All advertising equipment supplied to Buyer by Shell shall be used solely for advertising the products sold hereunder and shall remain Shell's property and shall be surrendered to Shell by Buyer on demand at any time.

8. Prior and Collateral Agreements: This contract shall constitute the entire agreement between Shell and Buyer and no other stipulation, agreement or understanding (oral or written, express or implied) of the parties or of their agents, relating to the subject matter of this contract, shall limit or qualify its terms. This contract shall, as of the commencement date hereof, cancel and supersede all prior agreements (written or oral, express or implied) between Shell and Buyer for the purchase and sale of the products named herein, and shall cancel and supersede any and all leases or other agreements between the parties hereto relative to the property from which the products hereunder are to be resold, and any and all other arrangements or understandings with regard to prices, discounts or differentials or relating to credits, bonuses or concessions to be paid by Shell in connection with the purchase or sale of said products.

9. Assignment: This contract shall extend to and be binding upon the successors and assigns of Shell and Buyer provided, however, that this contract shall not be assigned by Buyer or by operation of law without the written consent of Shell, and this contract shall not be deemed an asset in, and at the option of either party, shall terminate in the event of, any voluntary or involuntary receivership, bankruptcy or insolvency proceedings of Buyer.

10. Compliance with Laws: Should the performance of this contract or any provision thereof be or become violative or be claimed by any governmental official or body charged with the duty of administering the applicable law to be violative, or should the performance hereof by Shell cause or result in Shell's other sales, marketing and other activities of whatsoever nature to be or become violative of any law (Federal, State, County or Municipal) or any order, rule or regulation issued thereunder by a duly authorized body, or of any interpretation thereof announced by the Federal Trade Commission or any other competent

This Agreement, dated the day of , 19 , by and between Shell Oil Company, Incorporated, a corporation, hereinafter called "Shell," and , hereinafter called "Dealer,"

Witnesseth:

Shell hereby loans to Dealer and Dealer hereby acknowledges the receipt from Shell of the advertising and sales promotional materials listed in Appendix No. 1 hereunto attached. During the period this agreement remains in effect Shell will (1) supply once each year a new copy of Item 1 of said Appendix No. 1; (2) will endeavor to have current editions of Item 2 of said Appendix, and additional copies of Items 4, 5 and 6 of said Appendix, which may be required by dealer, available to dealer, and (3) will endeavor to have available for purchase by Dealer Follow-up Post Cards (Form No. Gr 1, 2, 3). All such materials and post cards shall be used exclusively in connection with the conduct of Dealer's lubrication service at the following described place of business:

Street Address City State

Title to all materials loaned hereunder to Dealer by Shell shall be and remain in Shell, and upon the expiration or sooner termination of this agreement, Shell shall have the right to repossess all of said materials and Dealer agrees to provide the proper means for Shell to do so.

For and in consideration of Shell's loan to Dealer of said materials, Dealer agrees to purchase from Shell (if Dealer does not currently have on hand) and to keep on hand during the life of this agreement, and Shell agrees to sell to Dealer, for cash on delivery, a representative stock of automotive lubricants as specified in Appendix No. 2 hereunto attached.

This agreement shall remain in effect until terminated by either party giving to the other written notice at least ten

administrative authority or any judicial authority, then Shell shall have the right to immediately cancel this contract by giving Buyer written notice of its election so to do.

11. Period: Unless sooner terminated, as hereinbefore provided, this contract shall continue in full force and effect from the date hereof until ..... and thereafter unless and/or until terminated by either party on ..... days written notice to the other.

Executed in duplicate the day and year first hereinbefore written.

Shell Oil Company
Incorporated
By .....
....., Buyer.
By .....

[fol. 2514]

Depot .....
Division .....

100% Dealer Gasoline Contract
and
Paint Work and Sign Agreement

This Agreement, made this ..... day of ....., 19 .., between Shell Oil Company, Incorporated, a corporation, hereinafter called "Shell," and .....
.....
hereinafter called "Dealer,"

Witnesseth:

1. Product and Quantity: Shell agrees to sell to Dealer and Dealer agrees to buy from Shell all gasoline and motor fuel hereinafter called "gasoline" which Dealer may require for resale at Dealer's premises situate at

Dealer shall not store or sell, or advertise or offer for sale, any gasoline on or from said premises, or on or from any property adjacent thereto, except as acquired from Shell.

2. Grade and Brand: The grade or grades and brand or brands of gasoline to be delivered hereunder shall be the

(10) days prior to the time such termination is to become effective.

Approved:

Local Manager

.....

Shellubrication Salesman

.....

Depot or Agency

.....

Division

If leased station show number .....

.....

Dealer

Shell Oil Company

Incorporated

By .....

Division Sales Manager

[fol. 2510] APPENDIX No. 1

Advertising and Sales Promotional Material Furnished to Dealer by Shell

Item	Charge
1. Shell Grease-Rite Guidebook	Loan ($5 Memorandum Charge)
2. Shell Grease-Rite Bulletins.	No charge
3. Binder for Shell Grease-Rite Bulletins	No charge
4. Shell Grease-Rite Work Order & Receipt	No charge
5. Lubrication Reminder Cards	No charge
6. Door Jamb Record Plates	No charge
7. Cement for Attaching Door Jamb Record Plates	No charge

grade or grades and brand or brands of gasoline which Shell is, at the time of delivery, selling at its distributing plant at .....
Shell shall have the absolute right, from time to time, to change the quality of its several brands of gasoline and to change the name or names of each thereof.

3. Deliveries: Deliveries shall be made by Shell by tank truck to Dealer's said premises within a reasonable time after the receipt of Dealer's orders therefor, due consideration being given to Shell's general distributing operations, provided, however, Shell shall not be obligated except at its option to make any single delivery of less than ..... gallons. Shell shall not be responsible for any failure or delay in making deliveries due in whole or in part, directly or indirectly, to any cause or condition of whatsoever nature or description beyond Shell's control.

4. Price and Terms: For all gasoline delivered hereunder Dealer shall pay to Shell, in cash on delivery, Shell's dealer net price for gasoline of like grade and quality delivered by tank truck to resellers coming within the same class and delivery area as Dealer, all as shown on the price schedules posted by Shell on date of delivery hereunder at its said distributing plant. Should Shell extend credit to Dealer, the extension thereof shall not be deemed a waiver of Shell's right at any time without notice, to require payment to be made in cash on delivery.

5. Resale Price: Dealer shall not sell, offer or advertise for sale any gasoline delivered by Shell hereunder at any price lower than Shell's retail price for gasoline of like grade and brand posted by Shell at its said distributing plant at the time of resale of such gasoline. Dealer shall not grant any rebates, discounts or concessions or resort to any device whatsoever whereby any purchaser may obtain such gasoline at a lower net price than Shell's said retail price posted as aforesaid.

6. Breach of Contract: Should Dealer at any time fail to abide by or comply with any of the terms or provisions of this contract, Shell may, at its election, suspend deliveries hereunder or may, at its election, cancel this contract. The waiver of any breach hereunder will not be deemed a continuing waiver or a waiver of any subsequent breach,

APPENDIX No. 2

Recommended Stock of Shell Automotive Lubricants

Minimum Quantity	Lubricant
25 lb. Package	Shell Super Chassis Lubricant
5 lb. Package	Shell Wheel Bearing Grease
5 lb. Package	Shell Steering Gear Lubricant E.P.
5 lb. Package	Shell Universal Joint Lubricant
1 lb. Package	Shell Waterproof Grease
5 Gallons	Golden Shell Motor Oil 10W (Winter Season) As required by reason of climate.
5 Gallons	Golden Shell Motor Oil 10 (20W) (Winter Season) As required by reason of climate.
5 Gallons	Golden Shell Motor Oil 20
5 Gallons	Golden Shell Motor Oil 30
5 Gallons	Golden Shell Motor Oil 40
5 Gallons	Golden Shell Motor Oil 50
5 Gallons	Golden Shell Motor Oil 70
50 lb. Package	Shell *Super Gear Hypoid* Lubricant SAE 90 EP
50 lb. Package	Shell Super Gear Lubricant SAE 140 EP
2 Gallons	Shell Spring Lubricant
5 Gallons	Shell Flushing Oil
1 Gallon	Shell Wet Clutch Oil
1 Gallon	Shell Handy Oil
1 Gallon	Shell Spring Oil
2 Sticks	Shell Door Ease

[fol. 2511] LOANED EQUIPMENT AGREEMENT

This Agreement, made this ..... day of ....., 19 . . , by and between Shell Oil Company, Incorporated, a corporation, hereinafter called "Shell", and

.....

.....

hereinafter called "Lessee".

whether of the same or a different provision of this contract. The remedies herein afforded Shell are cumulative and shall not be deemed to deprive Shell of any other remedy given to Shell by law:

7. Trademarks and Trade Names: Dealer may use the trademarks, trade colors and trade names of Shell to identify and advertise the products purchased hereunder, but shall not use the same for any other purpose or in connection with the sale of any other products. At the termination of this contract Dealer shall discontinue the use of trademarks, trade colors and trade names of Shell. All advertising equipment supplied to Dealer by Shell shall be used solely for advertising the products sold hereunder and shall remain Shell's property and shall be surrendered to Shell by Dealer on demand at any time.

8. Prior and Collateral Agreements: This contract shall constitute the entire agreement between Shell and Dealer and no stipulation, agreement or understanding (oral or written, express or implied) of the parties or of their agents, relating to the subject matter of this contract, shall limit or qualify its terms. This contract shall, as of the commencement date hereof, cancel and supersede all prior agreements (written or oral, express or implied) between Shell and Dealer for the purchase and sale of the products named herein, and shall cancel and supersede any and all leases or other agreements between the parties hereto relative to the property from which the products hereunder are to be resold, and any and all other arrangements or understandings with regard to prices, discounts or differentials or relating to credits, bonuses or concessions to be paid by Shell in connection with the purchase or sale of said products or relating to paint work or signs.

9. Assignment: This contract shall extend to and be binding upon the successors and assigns of Shell and Dealer provided, however, that this contract shall not be assigned by Dealer or by operation of law without the written consent of Shell, and this contract shall not be deemed an asset in, and at the option of either party, shall terminate in the event of, any voluntary or involuntary receivership, bankruptcy or insolvency proceedings of Dealer.

10. Compliance with Laws: Should the performance of this contract or any provision thereof be or become viola-

Witnesseth:

1. Shell agrees to furnish to Lessee and Lessee agrees to receive from Shell on a loan basis that certain personal property (hereinafter referred to as "Equipment") listed as follows:

receipt of all of said equipment in first-class condition and repair, Lessee hereby acknowledges.

2. This agreement shall continue in full force and effect from the ..... day of ....., 19 ..., until either party shall give to the other at least thirty (30) days' written notice of its desire to terminate.

3. Said equipment shall be used or installed only on premises located at .....,
and Lessee shall not remove, or permit any other person to remove, said equipment from said premises. Lessee shall keep and maintain said equipment in first-class condition and repair, keeping all surfaces properly painted in colors approved by Shell, and bearing trade marks, signs and marks of identification furnished or placed thereon by Shell.

4. Said equipment is and at all times shall remain the property of Shell, and Lessee hereby agrees not to permit said equipment to be encumbered or sold, nor to do or suffer to be done anything whereby said equipment may be seized or taken in execution, or attached, destroyed or injured, or by which the title of Shell thereto may be in any way affected, destroyed, prejudiced or impaired. Lessee shall bear the expense of and pay and discharge any and all fees, licenses, taxes, assessments or other charges that may be levied, assessed or imposed upon or in connection with said equipment, or for or in connection with the use thereof during the life of this agreement.

[fol. 2512] 5. Lessee agrees not to permit said equipment to be used in any manner except for the storage and sale of petroleum products purchased from Shell.

6. Lessee shall indemnify and hold Shell harmless from and against any and all liability, loss, claims, demands, proceedings and/or damages on account of loss of or damage to property of whatsoever kind, or for injury to or

tive or be claimed by any governmental official or body charged with the duty of administering the applicable law to be violative, or should the performance hereof by Shell cause or result in Shell's other sales, marketing and other activities of whatsoever nature to be or become violative of any law (Federal, State, County or Muncipal) or any order, rule or regulation issued theteunder by a duly authorized body, or of any interpretation thereof announced by the Federal Trade Commission or any other competent administrative authority or any judicial authority, then Shell shall have the right to immediately cancel this contract by giving Dealer written notice of its election so to do.

11. Period: Unless sooner terminated, as hereinabove provided, this contract shall continue in full force and effect from the date hereof until .....
If neither party shall give to the other at least ninety (90) days' written notice of its intention to terminate this contract on said date, this contract shall continue thereafter until terminated by either party giving to the other at least ninety (90) days' written notice.

12. Paint Work and Signs: Dealer authorizes Shell at its election to do painting and furnish signs pursuant to the provisions set out on the reverse side hereof, to all of which Dealer hereby agrees.

Executed in duplicate the day and year first hereinbefore written.

Shell Oil Company
Incorporated

By .....

....., Dealer

By .....

death of any person or persons arising out of or in any way connected with the installation, use, and/or maintenance of said equipment.

7. Should Lessee fail to abide by or comply with any of the terms or provisions of this agreement, Shell may, at its option, without notice, cancel this agreement.

8. Upon termination of this agreement for any reason whatsoever, and within a reasonable time thereafter, Shell shall have the right to enter upon said premises and remove said equipment without recourse to any legal proceedings, doing whatever is necessary for that purpose, without liability either to Lessee or any other party for anything it may do reasonably necessary to remove said equipment.

9. Lessee agrees to reimburse Shell upon demand for reasonable attorney's fees and costs as may be incurred by Shell in connection with the enforcement of this agreement.

In witness whereof, the parties hereto have caused this agreement to be executed on the day and year first hereinabove written.

Shell Oil Company
Incorporated
By .....

Lessee

Witness: .....

In consideration of One Dollar ($1.00) and other good and valuable consideration, receipt whereof is hereby acknowledged, the undersigned, owner of said premises described above, having read the foregoing agreement and being familiar with the same, does hereby consent to the foregoing agreement and to the installation of said equipment and facilities and agrees that all properties of Shell Oil Company, Incorporated, hereinafter called "Shell", on same shall be exempt from levy, sale, attachment or distress for any rent due, or to become due, and that Shell may enter upon the said premises with such agents and appliances as it may deem necessary, and remove any or

[fol. 2515] PAINT WORK AND SIGNS

1. *Authorization:*

The Dealer named in the 100% Dealer Gasoline Contract on the reverse side hereof hereby authorizes Shell Oil Company, Incorporated, (hereinafter called "Shell") at its election and without incurring liability to Dealer for any act or omission of Shell in connection therewith:

(a) To do the following painting at Dealer's place of business mentioned in said contract:

(b) To place the following described signboards or other advertising media which shall remain Shell's property:

(c) To install on gasoline pumps signs and insignia, including porcelain enamel emblems, and to make any necessary changes or alterations in connection with such installation, including the boring of holes in pump skirts. Upon removal, Shell shall have no obligation to plug holes or to otherwise restore pumps.

2. *Cost of Painting—Depreciation Allowance:*

Dealer shall not be obligated to pay Shell for any such paint work unless Dealer fails to abide by or comply with any of the terms or provisions of said 100% Dealer Gasoline Contract. In case Dealer so fails:

(a) He shall pay Shell, upon demand, the full cost of any such painting, less a depreciation allowance at the rate of 8% per month if the term of this contract is one year or less, and 4% per month if the term of this contract is over one year, computed in each case from the date of completion of paint work to and including the date such failure occurs, provided no depreciation allowance for any particular paint work in the event of any such failure by Dealer, shall exceed 80% of Shell's cost, and

(b) Shell, at its election, may enter upon Dealer's said premises and paint out or obliterate all paint work theretofore done by Shell, and Dealer shall, upon demand by Shell, reimburse Shell for the cost thereof.

3. *Alterations:*

Dealer agrees that he will not permit any of the signs, advertising media or painting furnished by Shell hereunder

to be removed, obliterated or in anywise altered during the term of said 100% Dealer Gasoline Contract and thereafter until ten (10) days after Dealer has given Shell written notice of his intention to make any such change. Shell shall have the right at any time prior to the lapse of said ten (10) day period to enter upon Dealer's said property and remove and or obliterate, either by painting out or otherwise, any paint work, signs, signboards or other advertising media furnished by Shell hereunder.

4. *Authority:*

Dealer represents he has full authority to permit all of the work herein mentioned to be done and agrees to hold Shell harmless from the claims of any person or persons by reason thereof.

Owner's Consent

The undersigned, the owner of the premises referred to in the 100% Dealer Gasoline Contract on the reverse side hereof, hereby consents to the above agreement; provided undersigned does not undertake any obligation to pay for any paint work therein mentioned or the removal or obliteration thereof.

Owner of Premises

[fol. 2516] PAINT WORK AND SIGN AGREEMENT

Depot

Paint Work and Sign Requisition No.

, Date

Date

Shell Oil Company
Incorporated

GENTLEMEN:

Undersigned, being now, or proposing at once to become, the purchaser of petroleum products from you for sale or use at the place of business of undersigned located at

requests you:

(a) to do the following painting at his said place of business:

In the event of any breach hereof or in the event undersigned, or the tenants, successors or assigns of undersigned, shall at any time within *one* (1) *year* from the date hereof cease to purchase from you all of the gasoline kept for sale or use at said place of business, or used therein or sold therefrom, undersigned will pay you on demand the full cost of said painting, less depreciation at the rate of eight per cent (8%) per month thereon computed from the date of completion of said painting, provided no depreciation in excess of eighty per cent (80%) shall be deducted. If you elect, you may exercise the further and additional right, upon any violation of the terms hereof or discontinuance of the purchase of all said gasoline, to enter said place of business and paint out or obliterate the said painting, provided you shall not be obligated to effect such painting out or obliteration;

(b) to place thereat the following described signboards or other advertising media, which shall remain your property:

(c) Install on gasoline pumps porcelain enamel emblems which will require holes to be bored in the skirt of the pumps. If and when the signs are removed, you shall have no obligation with respect to restoring the skirts to their original condition.

All signs or other advertising media are subject to obliteration or removal by you at any time without notice. If you should elect, in the event of breach of any of the terms hereof by undersigned to paint out or obliterate any painting or signs hereunder, undersigned agrees to pay the cost of such painting out and/or obliteration.

In consideration of your doing said painting, and/or placing said advertising media, undersigned agrees not to engage in or permit the removal or obliteration of said painting or other advertising media without your written consent, so long as your products are kept for sale or use at the said place of business or so long as any agreement with you, your successors or assigns, concerning the furnishing or consignment of your products for use or resale from or at said place of business, is in effect, nor thereafter until the expiration of ten (10) days after undersigned has notified you in writing and has afforded you adequate opportunity to enter said place of business and remove or obliterate said paint work, sign boards or other advertising media placed thereon by you.

The undersigned further represents he has full authority to have the said work done, and agrees to hold you harmless from the claims of any person by reason thereof.

Trade Name

Owner of Premises Proprietor

Address

[fol. 2517] DEFENDANTS' EXHIBIT I

SERVICE STATION LEASE

61 2500 3-46 Printed in U. S. A.

Leased Premises No.

This Agreement of Lease made this day of , 19 , between Shell Oil Company, Incorporated, a corporation, as Lessor, hereinafter referred to as "Shell," and

as Lessee, hereinafter called "Lessee,"

Witnesseth:

1. Shell does hereby lease and demise to Lessee, and Lessee does hereby lease from Shell, all that certain real property situate in the City of , County of , State of , particularly described as follows:

Together with all buildings, improvements and equipment thereon, listed in Exhibit "A" attached hereto and hereby made a part hereof, receipt of all thereof in good condition being hereby acknowledged.

2. Term: This lease shall continue in full force and effect for a period of one year commencing on the day of , 19 , and from year to year thereafter, provided, however, either party may terminate this agreement at the end of the first six (6) months of any contract year, or at the end of any such year by giving to the other at least thirty (30) days prior thereto, written notice of its intent to so terminate this agreement.

3. Rent: Lessee shall pay to Shell as rental for the demised premises for such calendar month of the term hereof a sum equivalent to cent(s) (c) for each gallon of gasoline delivered to the demised premises during the month for which payment is being made, for resale or distribution therefrom, payment for each month to be made on or before the tenth day of the next succeeding calendar month. In no case shall the said rental be less than the sum of Dollars ($) per month. Lessee shall keep a true and accurate record of all gasoline delivered to the demised premises and shall supply Shell with proper evidence thereof upon demand. All rentals shall be paid to Shell at .

4. Possession: At all times during the term hereof Lessee shall, and hereby covenants and agrees to conduct in a businesslike manner and maintain on the demised premises a first-class automobile supply or service station for the sale of gasoline, lubricating oil, greases, automobile tires, tubes and accessories and such other petroleum and other products commonly handled and sold in connection with the conduct of such business, and said premises shall be used for no other purpose whatsoever unless otherwise herein provided. Lessee shall observe all the requirements of law

or lawful ordinances, or orders relating to the conduct of Lessee's business on said premises, and shall promptly pay any and all taxes, license fees and other charges levied or assessed against any materials or property of Lessee located on the premises or in connection with the business maintained and conducted thereon. Lessee shall pay for all water, gas, heat and electric current used by Lessee on the premises during the continuance of this lease. In the event of Lessee's failure or refusal to pay any of the above charges, Shell may pay same and the amount paid shall become an indebtedness to Shell bearing interest at the rate of six percent (6%) per annum.

5. Repairs—Removal of Improvements: Lessee shall at all times, at Lessee's own cost and expense, make all necessary repairs and replacements of the improvements and equipment subject to this agreement and shall keep the leased property in neat, clean and properly painted condition, provided no repairs or replacements shall me made or done except with the written consent of Shell. Should Lessee fail to make such repairs and replacements as may reasonably be necessary for the proper preservation and maintenance of Shell's property, then Shell shall have the right to make such repairs and replacements and shall be granted the license to enter upon said premises for this purpose and Lessee shall reimburse Shell for the cost thereof. Upon the termination of this agreement Lessee shall, at Lessee's sole cost and expense, remove any additional properties placed by Lessee on the demised premises, provided this can be done without damage to the leased premises, and shall surrender the said premises and all buildings, improvements and equipment demised to Lessee hereunder, to Shell in as good condition as when received, reasonable use, wear and tear and damage by the elements excepted. All signs, colors or trade-marks, directly or indirectly identifying Lessee with such premises of the business conducted thereon, shall be removed by Lessee upon or prior to surrender of said premises.

If Lessee does not make the repairs and replacements for which Lessee is liable herein, and surrender the property in the condition required herein, Shell may make such repairs and replacements and do all work necessary therefor, and Lessee shall pay Shell the cost thereby incurred by

Shell, provided that if neither Lessee nor Shell shall make any such repairs or replacements or do any required work the Lessee shall pay Shell for the damaged, destroyed or missing property and for all work required to remedy the conditions, the reasonable value thereof. In the event the premises are rendered unfit for tenancy by fire or the elements, Shell may, at its option, repair or replace the property destroyed, but if Shell does not so repair or replace said property then this lease shall terminate and Shell shall be released from any further liability hereunder.

[fol. 2518] 6. Trademarks and Trade Names: This lease shall not be construed as conferring on Lessee the right to use Shell's trademarks, trade names, advertising signs and devices or color scheme of red and yellow.

7. Security: Lessee shall furnish to Shell such deposit or other security as Shell may require, to secure the payment of rentals or other sums which may become due Shell hereunder and to insure Lessee's full and faithful performance of the obligations hereunder. In the event a deposit shall be required, Shell may from time to time apply all or any part of such deposit to any indebtedness of Lessee to Shell whether accruing under this agreement or otherwise. Any unapplied portion of said deposit shall be returned to Lessee at the termination of this lease.

8. Control of Property: None of the provisions of this lease shall be construed as reserving to Shell any right to exercise any control or management over the business or operations of Lessee conducted upon the leased premises or to direct in any respect the manner in which any such business or operations shall be conducted or managed, it being understood and agreed that so long as Lessee shall use said premises in a lawful manner, for the purposes herein specified, the entire control and direction of such activities shall be and remain with Lessee. It is understood and agreed that neither Lessee nor any person or persons performing any duties or engaged in any work at the request of Lessee upon leased premises, shall be deemed the employee or agent of Shell.

9. Indemnity: Lessee agrees to indemnify and hold Shell harmless from and against any and all liability of whatsoever nature or kind for damage to property or for injury to or death of any person arising out of or in any way con-

nected with condition, use, possession, maintenance or operation of said premises.

10. Default: Should Lessee at any time fail to abide by or comply with any of the terms, conditions, covenants or provisions of this agreement, Shell may, at its election, without notice, immediately terminate this lease and may re-enter the said premises and exclude all other persons therefrom. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or of a different provision of this agreement. In case Shell shall retain an attorney for the protection and enforcement of its rights and remedies hereunder, Lessee agrees to reimburse Shell, upon demand, for reasonable attorney's fees and costs incurred in this connection. The remedies herein afforded Shell are cumulative and shall not be deemed to deprive Shell of any other remedy given it by law.

11. Sublease: It is understood Shell's interest in the demised premises is held under lease dated the ..... day of ....., 19..., from .....
and this agreement is made subject to all the terms, covenants and conditions thereof, and the herein agreement shall ipso facto terminate upon the termination of the first mentioned lease, whether by mutual consent of the parties hereto or for any other cause whatsoever. The Lessee shall cause or permit no act to be done, or create any lien which will in anywise impair Shell's interest and title under the lease in this paragraph first mentioned. Wherever the words "Lessor" or "Lessee" are mentioned in this agreement, said words shall be interpreted to mean "Sublessor" and "Sublessee," respectively.

12. Notices: Any notices provided herein may be given to Lessee by delivery in person or by registered mail addressed to Lessee at ....., and any notices hereunder may be given to Shell by registered mail addressed to it at .....
Either party may change its or his address at any time by written notice to the other.

13. Assignment: Lessee shall not assign this agreement, or any interest hereunder, or sublet any of the demised premises without the written consent of Shell. This agreement shall not be assigned by operation of law.

14. Cancellation of Previous Agreements: This lease cancels and supersedes any lease or other agreement between the parties hereto with reference to the possession of the demised premises.

15. Shell's Acceptance: It is expressly understood and agreed that Shell shall not be bound by any of the terms, conditions or covenants herein unless and until this agreement has been accepted by Shell and a copy of the same, signed by a duly authorized officer or employee of Shell, has been delivered to Lessee by Shell.

In Witness Whereof, the parties hereto have caused this agreement to be executed the day and year first hereinabove written.

SHELL OIL COMPANY, INCORPORATED
By .....
Lessor.

.....
Lessee.

Approved .....

.....

[fol. 2519] DO 727 9M 4-44. Ptd. in U. S. A.

SERVICE STATION SUBLEASE

This Agreement, made this ..... day of ....., 19 ..., between Shell Oil Company, Incorporated, as Sublessor, and ....., as Sublessee,

Witnesseth:

1. That for the term at the rental and upon the conditions, covenants and agreements hereinafter expressed and subject thereto, the Sublessor does hereby demise and sublet to the Sublessee, and the Sublessee does hereby sublease and hire from the Sublessor all that certain real property situate in the City of ....., County of ....., State of ....., particularly described as follows:

Together with all buildings, improvements and equipment thereon as listed in Exhibit "A" hereto attached and hereby made a part hereof.

2. Term: The term of this sublease shall be for a period of , commencing on the day of 19 , subject however to termination at any time by Sublessor, by giving to Sublessee ninety (90) days' written notice of its desire and intent to terminate.

3. Rental: Sublessee shall pay to Sublessor as rental for said premises a sum equal to cent(s) (c) for each gallon of gasoline delivered by Sublessor to the demised premises during the calendar month for which payment is to be made, commencing , 19 . Payment shall be made on or before the 20th day of the month next following the calendar month for which payment is due. The Sublessee shall pay any taxes which may during the said term be levied or assessed on improvements and equipment on the said premises whether placed thereon by the Sublessor or by Sublessee, and shall reimburse Sublessor for the cost of all insurance carried thereon or in connection therewith.

4. Default: In the event of the default of the Sublessee in the compliance with any of the conditions, covenants, or agreements hereof on his part to be kept and performed, then the Sublessor may terminate this sublease and may reenter the said premises and exclude all other persons therefrom, if Sublessee shall continue in default thereof for fifteen (15) days after Sublessor has made written demand for performance.

5. Possession: The Sublessee shall and hereby covenants and agrees to at all times during the term hereof conduct and maintain on the said demised premises an automobile supply or service station, and shall use, dispense, handle, sell and keep for sale petroleum products, including gasoline, lubricating oils and greases, supplied by and acquired from the Sublessor exclusively. This condition is a material consideration moving to the Sublessor for the grant of this sublease and without which it would not have granted the same. Any breach of this covenant shall entitle the Sublessor to terminate this sublease immediately without notice and shall entitle Sublessor to take immediate possession of the demised premises and all properties thereon, and to exclude all persons therefrom. The price Sublessee shall pay Sublessor for petroleum products purchased by Sublessee shall be Sublessor's posted price for the same

or similar products to its dealers generally in Sublessee's vicinity at time and place of delivery.

6. Repairs—Removal of Improvements: The Sublessee shall at all times at his own cost and expense make all necessary repairs and replacements to the improvements and equipment subject to this agreement. The Sublessee shall keep the leased property in neat and clean condition, and painted with the standard colors of the Sublessor. The Sublessee shall pay for all water, gas, heat and electricity used upon the said premises. On termination of this agreement the Sublessee may remove any additional properties placed by him at his expense on the demised lands, and shall surrender the said premises, and all other buildings, improvements and equipment demised to him hereunder to the Sublessor in as good condition as when received, reasonable use, wear and tear and damage by the elements excepted.

7. Indemnity: Sublessee agrees to protect, defend, hold harmless and indemnify the Sublessor against all claims for damage to property or injury or death to persons, directly or indirectly resulting from any acts or omissions of Sublessee or Sublessee's employees in or about the said premises.

8. Sublease: It is understood the Sublessor's interest in the demised premises is held under agreement dated the day of , 19 , with , as Lessor, a copy of said agreement being hereto attached and hereby made a part hereof, and this agreement is made subject to all the terms, covenants and conditions thereof. The Sublessee shall cause or permit no act to be done or create any lien which will in anywise impair the Sublessor's interest and title thereunder, and any violation of this covenant shall ipso facto terminate this agreement.

9. Notices: All payments shall be made and notices given to the Sublessor at and any notice may be given to the Sublessee hereunder by delivery in person or by registered mail addressed to the Sublessee at . Either party may change its or his address at any time by written notice to the other.

10. It is further understood and agreed that the certain contract bearing date of the day of 19 ,

between the parties hereto, is hereby declared to be terminated and rendered null and void.

In Witness Whereof, the parties hereto have executed this agreement in duplicate the day and year first hereinbefore written.

SHELL OIL COMPANY, INCORPORATED

By .....

Sublessor

.....

.....

Sublessee

[fol. 2520] SERVICE STATION SUBLEASE

This agreement, made this day of 19 , between SHELL OIL COMPANY, INCORPORATED, a corporation, as Sublessor, hereinafter called "Shell," and .....

.....

.....

, as Sublessee.

Witnesseth:

1. That for the term, at the rental and upon the conditions, covenants and agreements hereinafter expressed and subject thereto, Shell does hereby demise and sublet to the Sublessee, and the Sublessee does hereby sublease and hire from Shell all that certain real property situate in the City of , County of , State of , particularly described as follows:

Together with all buildings, improvements and equipment thereon as listed in Exhibit "A" hereto attached and hereby made a part hereof.

2. Term: The term of this sublease shall be for a period commencing on the day of , 19 , and ending two (2) days before the expiration of the term of the Lease referred to in Article 8 hereof, as the same may be from time to time extended; provided, however, this Sublease may be terminated at any time by Shell by giving Sublessee ninety (90) days' written notice of its desire and intent to terminate.

3. Rental: Sublessee shall pay to Shell as rental for said premises a sum equal to
cent(s) (¢) for each gallon of gasoline delivered by Shell to the demised premises during the calendar month for which payment is to be made. Payment shall be made on or before the 20th day of the month next following the calendar month for which payment is due. The Sublessee shall pay any taxes which may during the said term be levied or assessed on improvements and equipment on the said premises whether placed thereon by Shell or by Sublessee, and shall reimburse Shell for the cost of all insurance carried thereon or in connection therewith.

4. Default: In the event of the default of the Sublessee in the compliance with any of the conditions, covenants, or agreements hereof on his part to be kept and performed, then Shell may terminate this sublease and may reenter the said premises and exclude all other persons therefrom, if Sublessee shall continue in default thereof for fifteen (15) days after Shell has made written demand for performance.

5. Possession: The Sublessee shall and hereby covenants and agrees to at all times during the term hereof conduct and maintain on the said demised premises an automobile supply or service station, and shall use, dispense, handle, sell and keep for sale petroleum products, including gasoline, lubricating oils and greases, supplied by and acquired from Shell exclusively. This condition is a material consideration moving to Shell for the grant of this sublease and without which it would not have granted the same. Any breach of this covenant shall entitle Shell to terminate this sublease immediately, without notice and shall entitle Shell to take immediate possession of the demised premises and all properties thereon, and to exclude all persons therefrom. The price Sublessee shall pay Shell for petroleum products purchased by Sublessee shall be Shell's posted price for the same or similar products to its dealers generally in Sublessee's vicinity at time and place of delivery.

6. Repairs—Removal of Improvements: The Sublessee shall at all times at his own cost and expense make all necessary repairs and replacements to the improvements and equipment subject to this agreement. The Sublessee

shall keep the leased property in neat and clean condition, and painted with the standard colors of Shell. The Sublessee shall pay for all water, gas, heat and electricity used upon the said premises. On termination of this agreement the Sublessee may remove any additional properties placed by him at his expense on the demised lands, and shall surrender the said premises, and all other buildings, improvements and equipment demised to him hereunder to Shell in as good condition as when received, reasonable use, wear and tear and damage by the elements excepted.

7. Indemnity: Sublessee agrees to protect, defend, hold harmless and indemnify Shell against all claims for damage to property or injury or death to persons, directly or indirectly resulting from any acts or omissions of Sublessee or Sublessee's employees in or about the said premises.

8. Sublease: It is understood Shell's interest in the demised premises is held under agreement dated the ..... day of ....., 19..., with ..... , as Lessor, a copy of said agreement being hereto attached and hereby made a part hereof, and this agreement is made subject to all the terms, covenants and conditions thereof. The Sublessee shall cause or permit no act to be done or create any lien which will in anywise impair Shell's interest and title thereunder, and any violation of this covenant shall ipso facto terminate this agreement.

9. Assignment: Sublessee shall not assign this agreement or any interest hereunder or sublet any of the demised premises without the written consent of Shell. This agreement shall not be assigned by operation of law without Shell's consent.

10. Notices: All payments shall be made and notices given to Shell at ..... , and any notice may be given to the Sublessee hereunder by delivery in person or by registered mail addressed to the Sublessee at ..... . Either party may change its or his address at any time by written notice to the other.

11. It is further understood and agreed that the certain contract bearing date of the day of ,

19. , between the parties hereto, is hereby declared to be terminated and rendered null and void.

In witness whereof, the parties hereto have executed this agreement in duplicate the day and year first hereinbefore written.

SHELL OIL COMPANY, INCORPORATED
By .....
Sublessor

.....
Sublessee

[fol. 2521]

DEFENDANT'S EXHIBIT NO. J

General Petroleum Corporation

Utah-Nevada Division (#)

	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946
I Company Operated Service Stations										
Number of Service Stations	#	#	#	#	#	#	#	#	#	0
II Other Reseller Service Stations (Including Distributors)										
Number of Stations	#	#	#	#	#	#	#	#	#	31
a. Gallonage of Gasoline	....	....	....	....	....	....	....	....	....	1,101,283
b. Gallonage of Lub Oil	....	....	....	....	....	....	....	....	....	26,858
Wholesale Dollar Volume of:										
c. Tires and Tubes	....	....	....	....	....	....	....	....	....	12,142
d. Batteries	....	....	....	....	....	....	....	....	....	2,249
e. Automotive Accessories	....	....	....	....	....	....	....	....	....	2,889
III Split Resellers										
Number of Stations (included with So. Calif. Div.)										

(#) Territory Description:

State of Utah in its entirety.

This territory included with So. Calif. Division until January 1, 1946.

x—Data not available.

[fol. 2522]

General Petroleum Corporation

Arizona Division (#)

	1937	1938	1939	1940	1941	1942	1943	1944	1945*	1946*
I Company Operated Service Stations										
Number of Stations	#	#	#	#	#	#	#	2	0	0
a. Gallonage of Gasoline	....	....	....	....	....	....	....	89,159	–	–
b. Gallonage of Lub Oil	....	....	....	....	....	....	....	2,495	–	–
Retail Dollar Volume of:										
c. Tires and Tubes	....	....	....	....	....	....	....	x	–	–
d. Batteries	....	....	....	....	....	....	....	x	–	–
e. Automotive Accessories	....	....	....	....	....	....	....	x	–	–
II Other Reseller Service Stations (Including Distributors)										
Number of Stations	#	#	#	#	#	#	#	73	177	191
a. Gallonage of Gasoline	....	....	....	....	....	....	....	3,144,857	7,028,780	12,591,770
b. Gallonage of Lub Oil	....	....	....	....	....	....	....	78,300	172,884	261,489
Wholesale Dollar Volume:										
c. Tires and Tubes	....	....	....	....	....	....	....	x	19,267	30,171
d. Batteries	....	....	....	....	....	....	....	x	6,613	7,347
e. Automotive Accessories	....	....	....	....	....	....	....	x	4,589	9,233
III Split Resellers										
Number of Stations (included with So. Calif. Div.)										

(#) Territory Description:

Until July, 1944, this area was included with So. Calif. Division. The original area incorporated the western and central portions of Arizona, and after July 1, 1945, this was extended to include the entire State of Arizona, with the exception of Yuma, which is in So. Calif. Division.

* Includes Continental Oil Company units and volume acquired as of July 1, 1945.

x—Data not available.

[fol. 2523]

General Petroleum Corporation

So. Calif. Division (#)

	1937	1938	1939	1940	1941	1942	1943	1944	1945*	1946*
I. Company Operated Service Stations										
Number of Stations	11	0	0	0	0	15	20	7	3	2
a. Gallonage of Gasoline	649,081	–	–	–	–	1,013,952	1,638,792	494,026	416,815	720,148
b. Gallonage of Lub Oil	11,978	–	–	–	–	x	24,119	10,039	x	9,010
Retail Dollar Volume of:										
c. Tires and Tubes	x	–	–	–	–	x	x	x	x	x
d. Batteries	x	–	–	–	–	x	x	x	x	x
e. Automotive Accessories	x	–	–	–	–	x	x	x	x	x
II. Other Reseller Service Stations (Including Distributors)										
Number of Stations	882	825	798	731	767	563	600	561	1,256	1,336
a. Gallonage of Gasoline	46,602,774	47,593,500	49,610,959	48,059,011	54,729,887	43,346,952	40,220,662	40,747,596	88,275,449	138,807,087
b. Gallonage of Lub Oil	739,773	774,084	x	x	1,036,824	699,115	685,044	770,768	1,665,724	2,413,261
Wholesale Dollar Volume:										
c. Tires and Tubes	x	x	x	x	x	x	x	x	119,488	162,480
d. Batteries	x	x	x	x	x	x	x	x	45,303	50,468
e. Automotive Accessories	x	x	x	x	x	x	x	x	46,335	82,208
III. Split Resellers										
Number of Stations	....	....	....	....	....	42	x	x	x	x

(#) Territory Description: Southern portion of State of California, bounded on the north by San Luis Obispo, Visalia and Bishop; on the south by the International Boundary of Mexico; on the east by the Colorado River including Yuma, Arizona and the southern sector of Nevada. Until July, 1944, the western and central portions of Arizona were also included in the So. Calif. Division territory.

* Includes Gilmore Oil Company volume and units acquired as of March 11, 1945.

x Data not available.

[fol. 2524]

General Petroleum Corporation

No. Calif. Division (#)

	1937	1938	1939	1940	1941	1942	1943	1944	1945*	1496*
I. Company Operated Service Stations										
Number of Stations (Avg.)	7	0	0	0	0	9	15	7	0	0
a. Gallonage of Gasoline	167,798	–	–	–	–	602,785	889,482	209,217	–	–
b. Gallonage of Lub Oil	3,785	–	–	–	–	x	16,808	4,629	–	–
Retail Dollar Volume of:										
c. Tires and Tubes	x	–	–	–	–	x	x	x	–	–
d. Batteries	x	–	–	–	–	x	x	x	–	–
e. Automotive Accessories	x	–	–	–	–	x	x	x	–	–
II. Other Reseller Service Stations (Including Distributors)										
Number of Stations	526	505	482	482	459	326	340	389	746	812
a. Gallonage of Gasoline	21,994,934	22,406,376	22,554,438	22,736,647	24,981,052	20,504,044	18,279,649	17,061,599	39,336,433	60,849,564
b. Gallonage of Lub Oil	421,112	415,604	x	x	465,506	350,204	364,551	396,461	859,401	1,271,834
Wholesale Dollar Volume:										
c. Tires and Tubes	x	x	x	x	x	x	x	x	80,752	102,067
d. Batteries	x	x	x	x	x	x	x	x	35,953	32,053
e. Automotive Accessories	x	x	x	x	x	x	x	x	28,707	74,804
III. Split Resellers										
Number of Stations	....	....	....	....	....	16	x	x	x	x

(#) Territory Description: Northern portion of State of California bounded on the south by Paso Robles and Kingsburg; on the north by the Oregon State Line, and the easterly limits include the northern portions of the State of Nevada.

* Includes Gilmore Oil Company volume and units acquired as of March 11, 1945.

x Data not available.

MICROCARD
TRADE MARK ®

1945 48

MATTHEW BENDER & COMPANY
MB

[fol. 2525]

General Petroleum Corporation

Oregon Division (#)

	1937	1938	1939	1940	1941	1942	1943	1944	1945*	1946*
I. Company Operated Service Stations										
Number of Stations (Avg.)	3	1	0	0	0	1	3	3	1	0
a. Gallonage of Gasoline	278,487	26,247	–	–	–	64,772	249,066	267,546	231,855	–
b. Gallonage of Lub Oil	6,809	542	–	–	–	x	6,008	6,146	x	–
Retail Dollar Volume of:										
c. Tires and Tubes	x	x	–	–	–	x	x	x	x	–
d. Batteries	x	x	–	–	–	x	x	x	x	–
e. Automotive Accessories	x	x	–	–	–	x	x	x	x	–
II. Other Reseller Service Stations (Including Distributors)										
Number of Stations	344	350	396	401	399	316	324	338	650	767
a. Gallonage of Gasoline	11,703,726	12,767,680	14,687,815	14,262,325	16,158,117	13,354,117	13,092,802	12,878,423	25,818,272	42,912,988
b. Gallonage of Lub Oil	196,526	205,279	x	x	282,339	223,977	233,315	267,283	565,938	883,094
Wholesale Dollar Volume:										
c. Tires and Tubes	x	x	x	x	x	x	x	x	36,180	45,027
d. Batteries	x	x	x	x	x	x	x	x	12,332	12,769
e. Automotive Accessories	x	x	x	x	x	x	x	x	18,278	19,945
III. Split Resellers										
Number of Stations	....	....	....	....	....	0	x	x	x	x

(#) Territory Description: State of Oregon in its entirety, plus Branches in Washington adjoining the Columbia River. The eastern boundary included Boise, Idaho until July, 1945, when Branches were acquired in the territory south of the Salmon River and east of Burley, Idaho.

* Includes Gilmore Oil Company volume and units acquired as of March 11, 1945, and Continental Oil Company units and volume acquired as of July 1, 1945.

x Data not available.

[fol. 2526]

General Petroleum Corporation

Washington Division (#)

	1937	1938	1939	1940	1941	1942	1943	1944	1945*	1946*
I. Company Operated Service Stations										
Number of Stations (Avg.)	3	0	0	0	0	4	5	3	0	0
a. Gallonage of Gasoline	110,315	–	–	–	–	488,854	448,996	134,575	–	–
b. Gallonage of Lub Oil	2,161	–	–	–	–	x	9,533	3,226	–	–
Retail Dollar Volume of:										
c. Tires and Tubes	x	–	–	–	–	x	x	x	–	–
d. Batteries	x	–	–	–	–	x	x	x	–	–
e. Automotive Accessories	x	–	–	–	–	x	x	x	–	–
II. Other Reseller Service Stations (Including Distributors)										
Number of Stations	273	234	373	356	374	347	339	374	774	838
a. Gallonage of Gasoline	10,442,270	10,617,691	17,356,595	17,365,150	20,530,610	18,242,286	15,938,078	19,534,893	35,103,282	52,636,635
b. Gallonage of Lub Oil	209,179	213,958	x	x	376,439	302,233	294,491	382,406	732,210	1,084,824
Wholesale Dollar Volume:										
c. Tires and Tubes	x	x	x	x	x	x	x	x	53,608	120,766
d. Batteries	x	x	x	x	x	x	x	x	21,619	29,389
e. Automotive Accessories	x	x	x	x	x	x	x	x	19,789	33,891
III. Split Resellers										
Number of Stations	....	....	....	....	....	7	x	x	x	x

(#) Teritory Description: The State of Washington in its entirety with the exception of Branches adjoining the Columbia River. After July 1, 1945, Branches in Idaho, north of the Salmon River, were added to this Division.

* Includes Gilmore Oil Company volume and units acquired as of March 11, 1945, and Continental Oil Company units and volume acquired as of July 1, 1945.

x Data not available.

[fol. 2527] DEFENDANT EXHIBIT K

SERVICE STATION LEASE (L)

S. S. No. Deal No. St. Intersection

This indenture of lease made and entered into this day of , 19 , between GENERAL PETROLEUM CORPORATION, hereinafter called Lessor, and , jointly and severally, if more than one, hereinafter called Lessee.

1. Premises. Subject to easements, conditions and restrictions of record, Lessor hereby leases to Lessee those certain service station premises located at , in the City of , County of , State of . It is agreed, however, that the concession(s) located on said premises shall not be included under the terms of this lease but shall be reserved by Lessor.

2. Duration of Lease. This lease shall continue in effect for one (1) year from , 19 , and thereafter from year to year, provided, however, that same may be terminated by Lessor or Lessee any time during the term hereof or any extension thereof by giving seven (7) days' written notice.

3. Rental. Lessee agrees to pay to Lessor in advance on the first day of each and every calendar month during the term of this lease or any extension thereof, as rental, the sum of Dollars ($), and in addition thereto Lessee shall pay to Lessor a sum determined by multiplying by one (1¢) cent per gallon the number of gallons of gasoline sold by Lessor to Lessee. Should the monthly rentals, as determined by the method of computation hereinabove specified, be more than Dollars ($) for any calendar month (hereinafter referred to as the "Maximum Monthly Rental"), Lessee's rental obligation for such calendar month shall be limited to said Maximum Monthly Rental.

Lessee shall pay to Lessor the rentals becoming due on the number of gallons of gasoline sold to Lessee at time of sale by Lessor.

Should Lessee take possession of the demised premises on a day other than the first of any calendar month, his

first payment of rental to the Lessor shall be prorated in proportion to the number of days remaining in such calendar month.

4. Limitation as to Use. Lessee acknowledges that the premises are leased for the sole and exclusive purpose of conducting thereon a petroleum and gasoline service station business, and Lessee agrees at all times to operate said petroleum and gasoline service station business thereon in an orderly and lawful manner.

5. Inventory and Maintenance of Buildings and Equipment. Lessee hereby acknowledges receipt of all structures, apparatus, material and personal property listed on the inventory signed by Lessee on file in Lessor's office. Lessee acknowledges that said premises and all structures, apparatus, material and personal property situated thereon are in safe and in good order and condition and fit for carrying on the business for which they are leased, and Lessee agrees to maintain said premises in good and safe condition and make all repairs or replacements where damage, destruction or loss is occasioned by the negligent acts or omissions of Lessee or Lessee's agents, tenants, employees, guests or patrons. Lessee hereby waives all rights against Lessor under Sections 1941 and 1942 of the Civil Code of California. Should Lessee fail to promptly make such repairs or replacements, Lessor may, at its option, enter upon the premises and make such repairs or replacements, and Lessee shall promptly pay Lessor the cost thereof. Lessee further agrees not to make any alterations, changes or additions to said premises or to any of the buildings, improvements or equipment now in place thereon, and not to place any additional equipment, buildings or improvements thereon without first having obtained the written consent of Lessor so to do. Lessee agrees that Lessor during ordinary business hours may enter upon the premises and make such alterations, changes, additions, repairs or replacements it may deem necessary without any liability to Lessee in event of interference with Lessee's business.

6. Utilities, Taxes and Assessments. Lessor will pay all taxes levied on facilities leased hereunder.

Lessee hereby agrees to assume and to pay before delinquency, in addition to the rentals hereinabove pro-

vided, all charges for public utility services, all licenses, business permits, and all taxes and assessments that may be levied upon the improvements, equipment and stock in trade of Lessee placed by Lessee upon said premises.

[fol. 2528] 7. Liability. Lessor shall have at all reasonable times the right to enter upon said premises and inspect and examine the same, and to post such notices as Lessor may deem necessary to protect Lessor against loss from liens of laborers, materialmen or others, and Lessee further agrees to indemnify and save harmless said Lessor from any cause of action, loss, cost, damage, claim, demand or expense whatsoever arising out of any act or omission on the part of Lessee or Lessee's agents, tenants, employees, guests or patrons and which may cause damage to persons or property. In the event Lessee fails to pay or discharge any lien which may hereafter attach to the land demised herein, arising out of the act or omission of said Lessee, Lessor may, at its option, pay and discharge such lien, in which event Lessor shall be subrogated to the rights of the holder or holders thereof and may thereupon bill the Lessee for any and all expense incurred thereby, and such expense shall be payable from Lessee to Lessor at the date of payment of the monthly rental accruing first thereafter.

8. Sublease. It is specifically agreed that this instrument, regardless of the designation as a lease, shall be in all respects regarded as a Sublease, subject to the limitations thereof and dependent upon continuance in existence of that certain original lease on these premises, and Lessee agrees that in all events he will so conduct his operations on said premises as to in every respect comply with all the terms, conditions and limitations of said original lease, and in event of any termination of said original lease, this Sublease shall likewise terminate, and all of the rights of Lessee herein shall be at an end, and in such event Lessee herein named shall not be entitled to any damages whatsoever, nor to the refund of any moneys, except that if Lessee herein named be not in default at such time, he will be entitled to the refund of the prepaid rentals not theretofore applied and to no other payment whatsoever.

9. Performance. In the event of Lessee's failure to perform any of the provisions of this lease on his part to

be performed and upon failure of Lessee to remedy the same within three (3) days after written notice from Lessor so to do, or if Lessee shall assign this lease or sublet all or any portion of the demised premises without the written consent of Lessor, or if any process or proceeding of any court be instituted against Lessee in attachment, execution, proceedings in bankruptcy, insolvency or receivership, or if any proceedings be taken to sequester the assets of Lessee for the benefit of his creditors, or if there be any interference with or cessation of the business being conducted on said premises, (all of the foregoing shall be applicable, whether it be voluntary or involuntary on the part of the Lessee) then, and in each such event, Lessor, at its option may forthwith terminate this lease and re-enter the demised premises and take possession thereof. Lessee acknowledges that the rental value of said premises is its utility for the purpose of a petroleum and gasoline service station business and that Lessee's failure to operate and keep the demised premises open for business for a minimum of ten (10) hours out of each calendar day shall constitute an interference with or cessation of business being conducted on said premises. The rights herein conferred upon Lessor shall not be exclusive and shall not impair Lessor's right to collect any unpaid rentals or to re-let said premises for the account of Lessee after taking possession thereof and such other rights as Lessor may seek in law or in equity. Anything herein contrary to the terms and provisions of or regulations under any State or Federal law shall be modified to conform to the terms and provisions thereof.

10. Entirety of Contract; Waivers; Assignability. This instrument contains the entire agreement and understanding between the parties in respect of the subject matter. The right of Lessor to require strict performance shall not be affected by any previous waiver or course of dealing. This contract is not assignable by Lessee except with the written consent of Lessor, and upon the death of Lessee, this contract shall forthwith terminate.

11. Notices. Any notices to be given hereunder shall be in writing and shall be deemed to have been duly given if and when deposited in the United States mail, properly stamped and sent by Registered Mail to Lessor at

, and to Lessee at the service station address set forth herein; or when delivered personally to said parties at said addresses.

Executed the day and year first above written.

GENERAL PETROLEUM CORPORATION
By

Lessor

By

Lessee

By

Lessee

[fol. 2529] S. S. No.

Deal No.

SERVICE STATION LEASE (LX).

This Indenture of Lease, made and entered into this day of , 19 , by and between GENERAL PETROLEUM CORPORATION, a Delaware corporation, hereinafter referred to as "Lessor" and

hereinafter refered to as "Lessee".

Witnesseth:

Lessor, hereby leases to Lessee those certain premises situate at , in the City of , County of , State of , more particularly described as follows:

for the sole and exclusive purposes of conducting thereon a petroleum and gasoline service station, and Lessee agrees at all times to operate said petroleum and gasoline service station business thereon in an orderly and lawful manner.

This lease shall continue in effect for ( ) months and ( ) days from , 19 , and thereafter from year to year, provided, however, that the same may be terminated by Lessor at any time during the term or any extension thereof, upon thirty (30) days written notice to Lessee, and may be terminated by Lessee at the end of the original term or on any anniversary date, on thirty (30) days prior written notice.

1. Lessee agrees to pay to Lessor as rental the sum of $ per month; the first payment shall be made on the date on which possession is actually delivered to Lessee for the pro rata of the calendar month then current and thereafter on the first day of each and every calendar month to the end of the term.

Lessor hereby acknowledges receipt of the sum of $ as consideration for the execution of this lease, which sum is not and shall not be deemed any part of the rent reserved. If Lessee shall have fully and faithfully performed each and every obligation on the part of Lessee to be performed hereunder, then said sum of $ shall be applied upon the last ( ) months rental of this lease, but otherwise said sum shall belong to Lessor as part of the consideration for this lease.

All payments to Lessor hereunder shall be payable at its office at .....

[fol. 2530] 2. Lessee agrees at all times to keep the premises clean, sanitary and attractive looking. Lessee further agrees that he will not at any time during the term of this lease place or allow to be placed upon the demised premises structures or devices, without first having secured the written consent of Lessor.

3. Lessor shall have at all reasonable times the right to enter upon said premises and to inspect and examine the same and from time to time to paint the improvements and equipment located thereon with such colors as Lessor may see fit, and to post such notices as Lessor may deem necessary to protect Lessor against loss from the liens of laborers, materialmen or others, and Lessee hereby agrees to indemnify and save harmless said Lessor from any cause of action, loss, cost, damage, claim, demand or expense whatsoever arising out of any act or omission on the part of said Lessee, or Lessee's agents or employees, guests or patrons, and which may cause damage to persons or property.

4. Lessee hereby acknowledges receipt of all structures, apparatus, material and personal property listed on the inventory signed by Lessee on file in Lessor's office. Lessee acknowledges that said premises and all structures, apparatus, material and personal property situated there-

on are in safe and in good order and condition and fit for carrying on the business for which they are leased, and Lessee agrees to maintain said premises in good and safe condition and make at his own expense all repairs or replacements which may be necessary or which may be required by law, municipal ordinances or governmental regulations. Lessee hereby waives all rights against Lessor under Sections 1941 and 1942 of the Civil Code of California. Should Lessee fail to promptly make such repairs or replacements, Lessor may, at its option, enter upon the premises and make such repairs or replacements, and Lessee shall promptly pay Lessor the cost thereof. Lessee further agrees not to make any alterations, changes or additions to said premises or to any of the buildings, improvements or equipment now in place thereon, and not to place any additional equipment, buildings or improvements thereon without first having obtained the written consent of Lessor so to do. Lessee agrees that Lessor during ordinary business hours may enter upon the premises and make such alterations, changes, additions, repairs or replacements it may deem necessary without any liability to Lessee in event of interference with Lessee's business.

5. Lessee hereby agrees to assume and to pay before delinquency, in addition to the rentals hereinabove provided, any and all charges for electricity, power, water, gas and heat, used by Lessee in the conduct of Lessee's business on said demised premises, and Lessee further agrees to pay any and all taxes and assessments that may be levied upon the improvements, equipment and stocks in trade of Lessee placed by Lessee upon said premises. Lessor shall have no liability to furnish to Lessee or to secure for the benefit of Lessee the Service of water, gas, heat, electricity, power or any other utility service, nor shall Lessor have any liability to Lessee on account of the failure in continuity of any such service. In the event Lessee fails to pay or discharge any lien which may hereafter attach to the land demised herein, arising out of the act or omission of said Lessee, Lessor may at its option pay and discharge such lien, in which event Lessor shall be subrogated to the rights of the holder or holders thereof and may thereupon bill the Lessee for any and all expense incurred thereby, and such expense shall be payable from Lessee to Lessor at the date of payment of the monthly rental accruing first thereafter.

6. Any notices to be given hereunder shall be in writing and shall be deemed to have been duly given if and when deposited in the United States mail, properly stamped and sent by Registered Mail to Lessor at , and to Lessee at the service station address set forth herein, or when delivered personally to said parties at said addresses.

7. No assignment, sublease or transfer in whole or in part of this lease, or any interest therein may be made by Lessee nor shall any encumbrances be placed thereon without the written consent of Lessor having first been obtained.

8. In event of Lessee's failure to perform any of the provisions of this lease on his part to be performed, and upon failure of Lessee to remedy the same within three days after written notice from Lessor so to do, or if Lessee shall assign this lease or sub-let any portion of the demised premises or shall place any encumbrance on the premises or this lease without the consent in writing of Lessor, or if Lessee, or property owned or occupied by Lessee, be attached, or if Lessee commits an act of bankruptcy, or if execution be levied against Lessee, or property owned or occupied by Lessee, or any other proceedings be taken to sequester the assets of Lessee for the benefit of his creditors, then and in that event Lessor may, at its option, terminate this lease and re-enter the demised premises and take possession thereof. It is admitted that interference with the business being conducted on said premises will seriously affect the value of the property, and it is hereby agreed by the parties that in event any action be brought by Lessor to recover possession of said premises on account of the default of Lessee, that Lessor shall have the right to the appointment of a Receiver to carry on the business pending a decision of said action. The rights herein conferred upon Lessor shall not be exclusive and shall not impair Lessor's rights to pursue such other, different or inconsistent remedies as Lessor may see fit.

9. On the expiration of the term of this lease or sooner termination thereof, Lessee shall quietly and peacefully surrender the demised premises to Lessor in good order and condition, reasonable wear and tear thereof alone excepted, and if any action be brought by Lessor to recover possession of said premises or to enforce any obligation of Lessee hereunder, Lessee agrees to pay to Lessor a

reasonable attorney's fee to be fixed by the court in such action.

10. It is specifically agreed that this instrument regardless of the designation as a lease, shall be in all respects regarded as a sub-lease, subject to the limitations of and dependent upon continuance in existence of that certain original lease between , as Lessors, and , as Lessee, dated , 19 , which said lease is recorded in Book of of the County of State of , at page , thereof, and Lessee agrees that in all events he will so conduct his operations on said premises as to in every respect comply with all of the terms, conditions and limitations of said original lease, and in event of any termination of said original lease, this sub-lease shall likewise terminate and all of the rights of Lessee herein shall be at an end, and in such event Lessee herein named shall not be entitled to any damages whatsoever, nor to the refund of any moneys except that if Lessee herein named be not in default at such time, he shall be entitled to the refund of the prepaid rentals not theretofore applied and to no other payment whatsoever.

[fol. 2531] 11. The parties agree that there is no understanding or agreement, oral, written, expressed, or implied, existing on any of the subjects referred to in the foregoing agreement, other than this written agreement itself, and that every agreement, representation, warranty or understanding on the said subjects has been merged into this agreement, which is mutually understood to be, and shall be conclusively accepted as, full agreement between Lessor and Lessee.

In witness whereof, the parties hereto have caused this lease to be executed the day and year first above written.

GENERAL PETROLEUM CORPORATION

By

By

WITNESSES:

Lessor

Lessee

[fol. 2532] DEFENDANT'S EXHIBIT L

S. S. No.

Deal No.

Dealer Gasoline Contract (L).

This contract, made this day of , 19 , by and between GENERAL PETROLEUM CORPORATION, hereinafter called "Company", and hereinafter called "Dealer,"

Witnesseth:

Company shall sell and deliver to Dealer, and Dealer shall purchase and receive from Company, Dealer's ordinary trade requirements of gasoline for resale at the service station located at upon the following terms and conditions:

1. The gasoline to be delivered and received hereunder shall be such grades or brands which Company is at the time of delivery marketing and delivering from its distributing plant at to service station dealers located in the vicinity of Dealer's station, and Company shall have the absolute right from time to time to change the quality of or the names of such grades and brands, or any of them, or may discontinue the marketing of all or any of them and substitute any grades or brands for those so discontinued, without any liability whatsoever to Dealer. Deliveries shall be made by Company or its Authorized Distributor at Dealer's service station on orders of Dealer by tank truck in fairly even monthly quantities.

2. Dealer shall pay Company for all gasoline delivered hereunder, in cash, on delivery, at Company's posted prices to undivided independent reseller accounts in effect on date of delivery, applying to deliveries by tank truck for the grade and quality of gasoline so delivered, as posted at Company's said distributing plant which delivery is made applicable to the delivery area in which Dealer's station is located. If Company extends credit to Dealer, the extension thereof shall not be deemed a waiver of company's rights at any time, without notice, to require payments to be made in cash on delivery.

3. Company shall not be held liable for failure to make deliveries resulting from fire, riot, labor disturbances, strikes, lockouts, boycotts, picketing, earthquake, war, total or partial failure of transportation or delivery facilities of Company or carriers usually used or employed by Company in effecting deliveries hereunder; acts, orders, demands or recommendations of public officer or agents of government, whether foreign or domestic, federal, state, county or municipal acting under claim or color of authority, or for failure to make deliveries or delay in delivery when, for causes above specified, Company is unable to replenish its stocks of products involved by the means of transportation usually used or employed by Company in effecting such replenishment of stocks at the plant or plants from which products are obtained for delivery hereunder; nor shall Company be liable for failure to make deliveries hereunder for any other cause or causes reasonably beyond its control, whether similar or dissimilar to the causes above specified. In case deliveries be limited by partial failure of Company's usual source of supply or for any of the foregoing reasons, then Company shall apportion its available supply between Dealer and other buyers from Company without liability to Dealer.

4. Dealer agrees to (a) keep the products purchased from Company free from adulteration by or with any other products and sell them only under Company's respective brands applicable thereto; (b) during such time as any law, ordinance or regulation does not prohibit the fixing of resale or retail prices at which branded or trade marked products may be sold, Dealer shall not sell, offer or advertise for sale any petroleum products delivered by Company hereunder at any price lower than Company's posted retail price (if any be posted) applicable to place of sale, for petroleum products of like quality at time of resale of such petroleum products, nor grant any rebates, discounts or concessions, or resort to any devices whatsoever whereby any purchaser may obtain such petroleum products at lower net prices than Company's said posted retail price, unless required to do so by governmental regulations.

5. Dealer hereby agrees that he is conducting all business at the said service station above referred to as an independent contractor and not as an employee of Company, acknowledging hereby that Company has no direction or

control of the manner in which he conducts any business, or when or how such business is conducted except as herein otherwise provided.

6. Dealer agrees to protect, defend and hold Company harmless against all claims for damages to persons or property directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, or in the use, maintenance and operation on said premises of tanks, pumps, equipment and other facilities in connection with said service station, or from the sale, storage or delivery of products on said premises.

7. Dealer shall pay Company amounts equivalent to any tax (not included in the price or otherwise paid by Dealer) now or hereafter imposed. For the purpose of this contract the word "tax" shall be deemed to include all taxes, charges or duties now or hereafter levied or assessed directly or indirectly by any Federal, state or local governmental authority or agency upon or in any manner affecting the production, manufacture, storage, transportation, sale or distribution of the products sold hereunder, or on this contract, or any matter or thing connected with the performance thereof, which Company is required to pay to or collect for any such governmental authority or agency.

8. This contract shall extend to and be binding upon the successors and assigns of Company and Dealer, provided, however, that this contract is personal to Dealer and shall not be assigned by Dealer or by operation of law without the written consent of Company, and this contract shall not be deemed an asset in any receivership, bankruptcy or insolvency proceedings of Dealer and, at the option of either party, shall terminate in the event of any voluntary or involuntary receivership, bankruptcy or insolvency proceedings of Dealer.

9. The waiver of any breach of any provision hereof shall not be deemed to be a waiver of any other provision or provisions hereof or of any subsequent or continuing breach of such provision or provisions.

10. This contract shall continue in effect for one (1) year from date hereof and thereafter from year to year, subject to the right of Company or Dealer to terminate same at any time on seven (7) days' written notice. Company may

forthwith terminate this contract at any time by written notice to Dealer on any default by Dealer, or Company may suspend deliveries during such default. Any termination shall be without prejudice to the accrued rights of Company.

GENERAL PETROLEUM CORPORATION

By

Company

Dealer

[fol. 2533] DEALER GASOLINE CONTRACT (LX)

SS. No.
Deal No.

This Contract, made this day of , 19 , by and between GENERAL PETROLEUM CORPORATION, a corporation hereinafter called "Company," and

hereinafter called "Dealer,"

Witnesseth:

Company or its authorized distributor shall sell and deliver to Dealer, and Dealer shall purchase and receive from Company or its authorized distributor, Dealer's ordinary trade requirements of gasoline for resale at the service station located at

upon the following terms and conditions:

1. The gasoline to be delivered and received hereunder shall be such grades or brands which Company is at the time of delivery marketing and delivering from its distributing plant at to service station dealers located in the vicinity of Dealer's station, and Company shall have the absolute right from time to time to change the quality of or the names of such grades and brands, or any of them, or may discontinue the marketing of all or any of them and substitute any grades or brands for those so discontinued

without any liability whatsoever to Dealer. Deliveries shall be made at Dealer's service station on orders of Dealer by tank truck in fairly even monthly quantities.

2. Dealer shall pay Company for all gasoline delivered hereunder in cash, on delivery, at Company's posted prices to undivided independent reseller accounts in effect on date of delivery, applying to deliveries by tank truck for the grade and quality of gasoline so delivered, as posted at Company's said distributing plant from which delivery is made, applicable to the delivery area in which Dealer's station is located. If Company extends credit to Dealer, the extension thereof shall not be deemed a waiver of Company's right to at any time, without notice, require payments to be made in cash, on delivery.

3. Company shall not be held liable for failure to make deliveries resulting from fire, riot, labor disturbances, strikes, lockouts, boycotts, picketing, earthquake, war, total or partial failure of transportation or delivery facilities of Company or carriers usually used or employed by Company in effecting deliveries hereunder, acts, orders, demands or recommendations of public officers or agents of government, whether foreign or domestic, federal, state, county or municipal, acting under claim or color of authority, or for failure to make deliveries or delay in delivery when, for causes above specified, Company is unable to replenish its stocks of products involved by the means of transportation usually used or employed by Company in effecting such replenishment of stocks at the plant or plants from which products are obtained for delivery hereunder; nor shall Company be liable for failure to make deliveries hereunder for any other cause or causes reasonably beyond its control, whether similar or dissimilar to the causes above specified. In case deliveries be limited by partial failure of Company's usual source of supply or for any of the foregoing reasons, then Company shall apportion its available supply between Dealer and other buyers from Company without liability to dealer.

4. Dealer agrees to (a) keep the products purchased from Company free from adulteration by or with any other products and sell them only under Company's respective brands applicable thereto; (b) during such time as any law, ordinance or regulation does not prohibit the fixing of resale or

retail prices at which branded or trade marked products may be sold, Dealer shall not sell, offer or advertise for sale any petroleum products delivered by Company hereunder at any price lower than Company's posted retail price (if any be posted) applicable to place of sale, for petroleum products of like quality at time of resale of such petroleum products nor grant any rebates, discounts or concessions, or resort to any devices whatsoever, whereby any purchaser may obtain such petroleum products at lower net prices than Company's said posted retail price, unless required to do so by governmental regulations.

5. Dealer hereby agrees that he is conducting all business at the said service station above referred to as an independent contractor and not as an employee of Company, acknowledging hereby that Company has no direction or control of the manner in which he conducts any business, or when or how such business is conducted except as herein otherwise provided.

6. Dealer agrees to protect, defend and hold Company harmless against all claims for damages to persons or property directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, or in the use, maintenance and operation on said premises of tanks, pumps, equipment and other facilities in connection with said service station, or from the sale, storage or delivery of products on said premises.

7. Dealer shall pay Company amounts equivalent to any tax (not included in the price or otherwise paid by Dealer) now or hereafter imposed. For the purpose of this contract the word "tax" shall be deemed to include all taxes, charges or duties now or hereafter levied or assessed directly or indirectly by any Federal, state or local governmental authority or agency upon or in any manner affecting the production, manufacture, storage, transportation, sale or distribution of the products sold hereunder, or on this contract, or any matter or thing connected with the performance thereof, which Company is required to pay to or collect for any such governmental authority or agency.

8. This contract shall extend to and be binding upon the successors and assigns of Company and Dealer, provided, however, that this contract is personal to Dealer and shall not be assigned by Dealer or by operation of law without

the written consent of Company, and this contract shall not be deemed an asset in any receivership, bankruptcy or insolvency proceedings of Dealer and, at the option of either party, shall terminate in the event of any voluntary or involuntary receivership, bankruptcy or insolvency proceedings of Dealer.

9. The waiver of any breach of any provision hereof shall not be deemed to be a waiver of any other provision or provisions hereof or of any subsequent or continuing breach of such provision or provisions.

10. This contract shall continue in effect for . . . ( ) months and . . . ( ) days from . . . , 19 , and thereafter from year to year, provided, however, that same may be terminated by Company at any time during the term or any extension thereof, upon thirty (30) days written notice to Dealer, and may be terminated by Dealer at the end of the original term or on any anniversary date on thirty (30) days prior written notice. Company may forthwith terminate this contract at any time by written notice to Dealer on any default by Dealer, or Company may suspend deliveries during such default. Any termination shall be without prejudice to the accrued rights of Company.

GENERAL PETROLEUM CORPORATION

By

Company

Dealer

[fol. 2534] S.S #

DEALER'S GASOLINE CONTRACT

This Contract, made this day of , 194 , by and between GENERAL PETROLEUM CORPORATION, a corporation, hereinafter called "Seller," and , hereinafter caller "Buyer,"

Witnesseth

Quantity:

Subject to the other provisions of this agreement, Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the term hereof, for resale at Buyer's premises situated at ; the following petroleum products in yearly quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified for the respective products:

	Minimum	Maximum
Gasolines	Gals.	Gals.

Grade and Brands of Gasoline:

The gasoline to be delivered hereunder shall be those grades of Seller's gasoline which are currently marketed by Seller at the delivery point or points involved.

Price:

Buyer shall pay Seller in cash for all gasoline delivered by Seller to Buyer at Seller's posted price to undivided independent reseller accounts for gasoline of like grade and quality applying to deliveries by tank truck in the same delivery area as Buyer as shown on price schedules posted by Seller on date of delivery at Seller's said bulk storage plant.

Period:

This contract shall continue in effect (subject to prior termination as herein provided) for the period of five years from date hereof, and thereafter until cancelled by either Buyer or Seller upon 90 days written notice to the other.

Assignability:

This contract is not assignable without the written consent of Seller.

Additional Provision:

The Provisions Printed on the Reverse Side Hereof Are Hereby Made a Part of This Agreement.

GENERAL PETROLEUM CORPORATION
By

(Seller)

(Buyer)

[fol. 2535] Delivery:

Delivery shall be made by Seller or its authorized distributor at Buyer's above mentioned station, on orders of Buyer in bulk by tank truck in fairly even monthly quantities at the prices herein specified.

Credit Terms:

If Seller extends credit to Buyer, the extension thereof shall not be deemed a waiver of Seller's right at any time, without notice, to require payments to be made in cash on delivery.

Taxes:

Buyer shall pay Seller amounts equivalent to any tax (not included in the price or otherwise paid by Buyer) now or hereafter imposed. For the purpose of this contract the word "tax" shall be deemed to include all taxes, charges or duties now or hereafter levied or assessed directly or indirectly by any domestic or foreign governmental authority or agency upon or in any manner affecting the production, manufacture, storage, transportation, sale or distribution of the products sold hereunder, or on this contract, or any matter or thing connected with the performance thereof, which Seller is required to pay to or collect for any such governmental authority or agency.

Prevention of Performance:

Seller shall not be held liable for failure to make deliveries resulting from fire, riot, labor disturbances, strikes, lockouts, boycotts, picketing, earthquake, war, total or partial failure of transportation or delivery facilities of Seller

or carriers usually used or employed by Seller in effecting deliveries hereunder, acts, orders, demands or recommendations of public officers or agents of government, whether foreign or domestic, federal, state, county or municipal, acting under claim or color of authority, or for failure to make deliveries or delay in delivery when, for causes above specified, Seller is unable to replenish its stocks of products involved by the means of transportation usually used or employed by Seller in effecting such replenishment of stocks at the plant or plants from which products are obtained for delivery hereunder; nor shall Seller be liable for failure to make deliveries hereunder for any other cause or causes reasonably beyond its control, whether similar or dissimilar to the causes above specified. In case deliveries be limited, by partial failure of Seller's usual source of supply or for any of the foregoing reasons, then Seller shall apportion its available supply between Buyer and other buyers from Seller without liability to Buyer.

Breach of Contract:

In the event that either party shall fail to perform any of the provisions of this contract and said default shall continue after five (5) days' written notice from the party not in default, then this contract may be terminated at the option of the party not at default. A waiver for any breach of any provisions hereof shall not be deemed to be a waiver of any other provision or provisions hereof or of any subsequent or continuing breach of such provision or provisions.

Former Contracts:

This contract shall as of the commencement date hereof cancel and supersede all prior contracts between Seller and Buyer for the purchase and sale of the products named for use at the place mentioned, and shall cancel and supersede all other agreements or understandings with regard to leases, rentals, commissions, agency and other relationships between the parties and prices or differentials or relating to credits, bonuses, or concessions to be paid by Seller in connection with the purchase and sale, consignment or handling of said products. The entire transaction between the parties is set forth in this contract. No other understandings or agreements, oral, written, express or implied, exist on any of the subjects referred to herein, and all agree-

ments and representations have been merged into this contract.

Statutory Regulations:

In so far as this agreement is or may become subject to any statutory provision relating to the subject matter hereof, as well as any order, regulation, interpretation or recommendation of public officers or agents of government, whether foreign or domestic, federal, state, county or municipal, acting under claim or color of authority, it shall be deemed modified so as to conform to the applicable provisions of such law, order, regulation, interpretation or recommendation so long as the same may be in effect.

Maintenance of Retail Price:

During such time as any law, ordinance or regulation permits or authorizes the fixing of resale or retail prices at which branded or trademarked products may be sold, Buyer shall not sell, offer for sale, or advertise for sale any gasoline delivered by Seller hereunder, at any price lower than Seller's authorized retail price for gasoline of like quality at the place and time of resale of such gasoline, and Buyer shall not grant rebates, discounts or concessions or resort to any device whatsoever whereby any purchaser may obtain such gasoline at a lower net price than Seller's said retail price. Buyer shall resell all gasoline secured from Seller only under brands designated by Seller, and Buyer agrees not to mix, substitute, or adulterate said gasolines with any other material.

[fol. 2536]

DEFENDANT'S EXHIBIT No. M

The Texas Company

Petroleum products are sold at retail by or for the Company through dealers in the States of:

California,
Oregon,
Washington,
Arizona,
Nevada,
Utah,
Idaho.

The maximum number of Company-operated service stations during each year, 1937 to 1946, inclusive, in each of the seven states:

California	None in:
1937—3	Oregon,
1938—3	Washington,
1939—3	Arizona,
1940—3	Nevada,
1941—2	Idaho,
1942—2	Utah.
1943—1	
1944—1	
1945—0	
1946—0	

The maximum number of retail dealers handling the Company's branded products during each year, 1937 to 1946, inclusive, in each of the seven states:

Year	Calif.	Arizona	Nevada	Idaho	Utah	Washington-Oregon
1937	1432	302	86	326	208	Not available
1938	1434	310	67	331	217	Not available
1939	1488	309	88	360	248	Not available
1940	1486	296	84	404	267	Not available
1941	1720	295	86	426	278	1180*
1942	1528	304	82	379	251	1025*
1943	1421	246	64	316	211	922*
1944	1334	217	69	313	211	919*
1945	1486	270	72	310	208	1013*
1946	1763	305	81	342	228	1123*

*—Total for both states.

The estimated gallonage of Company's gasoline sold at retail in the seven states during the year 1946 by retail dealers handling the Company's branded products:

California Arizona Nevada	168,100,853 gallons,
Washington Oregon	64,603,870 gallons,
Idaho Utah	18,563,912 gallons.

[fol. 2537]

The estimated gallonage of Company's lube oil sold at retail in the seven states during the year 1946 by retail dealers handling the Company's branded products:

California Arizona Nevada	3,124,134 gallons.
Washington Oregon	1,286,283 gallons.
Idaho Utah	574,956 gallons.

The approximate number of so-called split-pump stations handling the Company's gasoline in each such state for 1946:

Calif.	Arizona	Nevada	Oregon	Washington	Idaho	Utah
31	0	1	0	0	12	5

[fol. 2538]

Defendant Exhibit X

The Texas Company

No.

Agreement of Sale (in duplicate) made on the day of , 19 , between The Texas Company, a Delaware corporation, having a Division Sales Office at , hereinafter called Seller, and of , hereinafter called Purchaser.

(1)—Sale. Seller hereby sells and agrees to deliver and Purchaser buys and agrees to receive and pay for the following products of the kind and quality marketed by Seller at time and place of delivery in quantities specified from time to time by Purchaser, but in respect of each product not less per year than the minimum nor more per year than the maximum quantity stated below.

Product	Minimum	Maximum
(a) Texaco Sky Chief Gasoline	gallons	gallons
(b) Texaco Fire Chief Gasoline	gallons	gallons
(c) Texaco Motor Lubricants	gallons	gallons
(d) Texaco Motor Lubricants	pounds	pounds
(e)		

(2)—Point(s) of Delivery:

(3)—Prices. The prices f.o.b. are:

a. For Texas Sky Chief Gasoline, Texaco Fire-Chief Gasoline and Texaco Indian Gasoline: Seller's posted dealer price therefor at time of delivery, as posted for the area in

which delivered at the bulk plant from which deliveries are made.

b. For Motor Lubricants: The prices shown on Seller's Schedule for Motor Lubricants in effect at time and place of delivery. (Seller's Pacific Coast Selling Schedule for Motor Lubricants now in effect, dated , 19 is attached hereto.)

(4)—Terms of Payment.

Gasoline: C. O. D. net.

Motor Lubricants: C. O. D., less 1% of price, exclusive of any tax included therein or added thereto.

(5)—Other Provisions. The Provisions of Agreement printed on the reverse side hereof, except those that by their terms are inapplicable, are parts of this agreement.

(6)—Duration of Agreement. This agreement shall remain in full force and effect from to and thereafter from year to year; provided, however, that

a. Either party may terminate this agreement on the last mentioned date or any succeeding anniversary thereof by giving written notice to the other at least thirty days prior to the date upon which termination shall become effective; and

b. If this agreement covers delivery at premises leased by Seller to Purchaser, it shall automatically terminate upon termination or cancellation of such lease; and

c. Either party may terminate this agreement forthwith by written notice upon failure of the other party to perform strictly any of the obligations imposed upon the other hereby.

(Purchaser)

By

THE TEXAS COMPANY

(Seller)

By

Witness:

Witness:

Negotiated by:

[fol. 2539] Provisions of Agreement

Entirety of Agreement.—No prior stipulations, agreement or understanding of the parties or their agents shall be valid or enforceable unless embodied in this agreement or covered by these provisions.

Delivery.—Unless otherwise stated in this agreement, delivery shall be deemed complete when goods, properly consigned, are placed free on board cars, boats or other vehicles.

Waiver.—The right of either party to require strict performance by the other of any and/or all obligations imposed upon the other by this agreement shall not in any way be affected by any previous waiver, forbearance or course of dealing.

Tank Cars.—Any tank cars furnished by the Seller shall be discharged by the Purchaser immediately upon arrival and delivered back to the railway from which they were received, billed in accordance with forms furnished by the Seller, and for any cars of the Seller detained more than 48 hours the Purchaser, besides paying such railway demurrage as may accrue, shall pay the Seller the amount per car stated in this agreement, or if not stated, then Two ($2.00) Dollars for each day or portion of a day after expiration of 48 hours.

Vessel Deliveries.—When shipment is made by boat, lighter, tank ship, or other vessel, the Purchaser immediately upon the arrival thereof shall furnish, without cost to the Seller, berth at which the vessel may lie safely afloat at all stages, together with the necessary connections and facilities for receiving, and shall receive the oil as fast as it can be discharged. The oil shall be pumped out at the expense of the Seller, its risk and responsibility ending at the boat's rail. In ports where fire is not allowed on board vessels, the Purchaser shall find and furnish steam for discharging purposes. The lay days or free unloading time for vessels and the penalties for detention beyond such time shall be in accordance with local trade custom unless otherwise specifically agreed upon at the time of execution of this agreement.

Deliveries in Drums.—If drums or wood barrels of the Seller are used, said drums or wood barrels shall remain the property of the Seller, and a deposit will be charged for

same on the invoice at the rates in effect at the time of delivery. All said drums or wood barrel of the Seller shall be returned promptly on demand, in as good condition as when received, less ordinary wear and tear, and nothing other than the original contents shall be placed therein.

Force Majeure.—Failure (in whole or in part) or delay on the part of either party in the performance of any of the obligations imposed upon such party hereunder shall be excused and such party shall not be liable for damages or otherwise on account thereof, when such failure or delay is the direct or indirect result of any of the following causes, whether or not existing at the date hereof, and whether or not reasonably within the contemplation of the parties at the date hereof, namely: Acts of God, earthquakes, fire, flood, or the elements, malicious mischief, insurrection, riot, strikes, lockouts, boycotts, picketing, labor disturbances, public enemy, war (declared or undeclared), compliance with any federal, state or municipal law, or with any regulation, order, rule, recommendation, request or suggestion (including, but not limited to, priority, rationing or allocation orders or regulations) of governmental agencies, or authorities or representatives of any government (foreign or domestic), acting under claim or color of authority; total or partial failure or loss or shortage of all or any part of transportation facilities ordinarily available to and used by a party hereto in the performance of the obligations imposed by this agreement, whether such facilities are such party's own or those of others; or, if failure or delay be that of Seller, total or partial loss or shortage of raw or component materials or products ordinarily required by Seller; the commandeering or requisitioning by civil or military authorities of any raw or component materials, products, or facilities, including, but not limited to producing manufacturing, transportation and delivery facilities; perils of navigation, even when occasioned by negligence, malfeasance, default, or errors in judgment of the pilot, master, mariners or other servants of the ship's owner; or any cause whatsoever beyond the control of either party hereto, whether similar to or dissimilar from the causes herein enumerated.

If, by reason of any of said causes, Seller is unable to make deliveries to all its customers (whether under contract or

not) its failure in whole or in part to make deliveries to Purchaser, while delivering to others, shall not be a breach of this agreement and in such event Seller may, but shall not be obligated to, prorate its available supply.

Upon the cessation of the cause or causes for any such failure or delay, performance hereof shall be resumed, but such failure or delay shall not operate to extend the term of this agreement nor obligate either party to make up deliveries or receipts, as the case may be.

Seller may suspend deliveries so long as its cost of performance is increased and the increased cost cannot be recovered by an equivalent increase in the price to be paid by Purchaser.

Nothing herein contained shall excuse Purchaser from paying Seller, when due, any amounts payable hereunder or pursuant hereto.

Ethyl-Treated Gasoline.—The Purchaser shall handle ethyl-treated gasoline in accordance with rules and regulations now in existence or which may be issued hereafter by any governmental agency having jurisdiction and shall have his employees properly instructed in respect to all said rules and regulations.

If Purchaser is required to obtain a license to handle, distribute or sell ethyl-treated gasoline, this agreement shall not be effective in respect of said gasoline at any time other than when such license is in full force and effect.

Indian Gasoline.—If this agreement covers Indian Gasoline, Seller shall not be obligated to deliver product until (a) Seller has an adequate supply thereof at its plant from which delivery shall be made to Purchaser, and/or (b) adequate facilities for the receipt and handling thereof have been installed by Purchaser. Seller, in its uncontrolled discretion, at any time, may discontinue selling and delivering Indian Gasoline hereunder.

Payments.—The Purchaser shall pay for goods without discount or deduction except as stated in this agreement; and if at any time the financial responsibility of the Purchaser shall become impaired or unsatisfactory to the Seller or in the Seller's opinion inadequate to meet the obligations hereunder, cash payments or satisfactory security may be required. A failure to pay any amount when due may at the option of the Seller terminate this agreement as to further deliveries.

Claims.—Any claims for defect or variance in quality or shortage in quantity shall be made, and the Seller shall be notified and given an opportunity to inspect, within two days after the product or goods are delivered, except that if delivery is made in equipment furnished by the Seller such notice and opportunity shall be given before the product or goods are unloaded; and if delivery is made in equipment furnished by the Purchaser such notice and opportunity shall be given before the products or goods move from point of shipment. If equipment furnished by the Seller is in bad order or leaking the Purchaser shall notify the carrier and secure examination by the authorized agent of the carrier as to the condition of the shipment before the same is unloaded. Failure of the Purchaser to comply with these requirements shall operate as a waiver of any and all claims by the Purchaser.

Taxes.—Purchaser assumes the payment of any tax and/or duty now or hereafter imposed, directly or indirectly, by the United States, or any State or foreign country, or governmental subdivision thereof, on (a) the goods covered by this agreement and/or (b) the production, manufacture, transportation, sale, use and/or other handling of said goods and/or (c) the production, manufacture, transportation, purchase, sale, use, exportation, importation and/or other handling of any material contained in said goods or from which said goods are wholly or partly refined or manufactured, and/or (d) the Seller on account of the sale or measured by the sales price of said goods; and the Seller may bill Purchaser for such tax or duty and the Purchaser shall pay the amount thereof.

Freight Rates.—The prices mentioned in this agreement are based on existing freight rates, and if under this agreement the Seller is to pay freight, then in case the rates are increased or diminished these prices shall be increased or diminished accordingly.

Monthly Shipments.—If this agreement extends over a period of months, shipments or deliveries shall be in equal monthly quantities unless otherwise stated in this agreement, the Purchaser having the option of varying the monthly quantities by ten per cent, provided that, subject to other provisions of this agreement, the agreed quantity must be taken within the time fixed.

Approximate Quantities.—In case deliveries are made in carload, boatload, transport truck or tankwagon lots, deliveries within ten per cent of amounts called for by this agreement or any installment thereof shall be deemed sufficient deliveries by the Seller, only the actual amounts delivered to be paid for.

Trademarks and Names.—Purchaser shall not sell products purchased from others under the trademark or trade name of Seller, unless Seller shall, after analysis thereof, give special consent in writing; Purchaser, however, shall have the right to use the trademarks and trade names of Seller to identify and advertise Seller's products by Purchaser on condition that Purchaser shall follow directions as to manner of such use given to Purchaser by Seller.

Assignability.—This agreement shall not be assigned by the Purchaser without the written consent of the Seller.

Approval and Signing By Seller.—Agreements involving $10,000 or less and covering one year or less may be approved and signed on behalf of The Texas Company by any of the following: by the Manager of National Sales Division; Manager of Roofing Division; Manager of Aviation Division; Manager of Marine Sales Division; and Division Managers and Assistant Division Managers.

All other agreements must be approved and signed by one of the following: by the Company's President; any Vice President; Secretary; General Sales Manager; Assistant General Sales Managers; Assistant to the Vice President of Sales Department; Manager of Dealer Sales; Manager of Industrial Sales; Manager of Operations; Managers and Assistant Managers of Territories of the Sales Department; Manager and Assistant Managers of Asphalt Sales Department; Manager and Assistant Managers of the Railway Traffic and Sales Department; Manager of Bulk, Fuel and Government Sales Division, and Manager of Purchasing Department.

Until approved and signed on its behalf as above stipulated, agreements are not binding on The Texas Company; and commencement of performance hereunder prior to such approval and signing shall in no case be construed as a waiver by The Texas Company of the foregoing requirements.

[fol. 2540] THE TEXAS COMPANY

No.

Agreement of Sale (in duplicate) made on the day of , 19 , between THE TEXAS COMPANY, a Delaware corporation, having a Division Sales Office at , hereinafter called Seller, and of , hereinafter called Purchaser.

(1)—Sale. Seller hereby sells and agrees to deliver and purchaser buys and agrees to receive and pay for the following products of the kind and quality marketed by Seller at time and place of delivery in quantities specified from time to time by Purchaser, but in respect of each product not more per year than the maximum quantity stated below:

Product	Maximum
(a) Texaco Sky Chief Gasoline	gallons
(b) Texaco Fire-Chief Gasoline	gallons
(c) Texaco Motor Lubricants	gallons
(d) Texaco Motor Lubricants	pounds
(e)	

(2)—Point(s) of Delivery.

(3)—Prices. The prices f.o.b. are:

a. For Texaco Sky Chief Gasoline and Texaco Fire-Chief Gasoline: Seller's posted dealer price therefor at time of delivery, as posted for the area in which delivered at the bulk plant from which deliveries are made.

b. For Motor Lubricants the prices shown on Seller's Schedule for Motor Lubricants in effect at time and place of delivery. Seller's Pacific Coast Selling Schedule for Motor Lubricants now in effect, dated , 19 , is attached hereto.

(4)—Terms of Payment.
Gasoline: C.O.D. net.
Motor Lubricants: C.O.D., less 1% of price, exclusive of any tax included therein or added thereto.

(5)—Other Provisions. The Provisions of Agreement printed on the reverse side hereof, except those that by their terms are inapplicable, are parts of this agreement.

(6) Duration of Agreement. This agreement shall remain in full force and effect from
to and thereafter from year to year; provided, however, that

a. Either party may terminate this agreement on the last mentioned date or any succeeding anniversary thereof by giving written notice to the other at least thirty days prior to the date upon which termination shall become effective; and

b. If this agreement covers delivery at premises leased by Seller to Purchaser, it shall automatically terminate upon termination or cancellation of such lease; and

c. Either party may terminate this agreement forthwith by written notice upon failure of the other party to perform strictly any of the obligations imposed upon the other hereby.

(Purchaser)
By
THE TEXAS COMPANY (Seller)
By
Witness:

Witness:

Negotiated by:

[fol. 2541] Provisions of Agreement

Entirety of Agreement.—No prior stipulation, agreement or understanding of the parties or their agents shall be valid or enforceable unless embodied in this agreement or covered by these provisions.

Delivery.—Unless otherwise stated in this agreement, delivery shall be deemed complete when goods, properly consigned, are placed free on board cars, boats or other vehicles.

Waiver.—The right of either party to require strict performance by the other of any and or all obligations imposed upon the other by this agreement shall not in any way

be affected by any previous waiver, forbearance or course of dealing.

Tank Cars.—Any tank cars furnished by the Seller shall be discharged by the Purchaser immediately upon arrival and delivered back to the railway from which they were received, billed in accordance with forms furnished by the Seller, and for any cars of the Seller detained more than 48 hours the Purchaser, besides paying such railway demurrage as may accrue, shall pay the Seller the amount per car stated in this agreement, or if not stated, then Two ($2.00) Dollars for each day or portion of a day after expiration of 48 hours.

Vessel Deliveries.—When shipment is made by boat, lighter, tank ship, or other vessel, the Purchaser immediately upon the arrival thereof shall furnish, without cost to the Seller, berth at which the vessel may lie safely afloat at all stages, together with the necessary connections and facilities for receiving, and shall receive the oil as fast as it can be discharged. The oil shall be pumped out at the expense of the Seller, its risk and responsibility ending at the boat's rail. In ports where fire is not allowed on board vessels, the Purchaser shall find and furnish steam for discharging purposes. The lay days or free unloading time for vessels and the penalties for detention beyond such time shall be in accordance with local trade custom unless otherwise specifically agreed upon at the time of execution of this agreement.

Deliveries in Drums.—If drums or wood barrels of the Seller are used, said drums or wood barrels shall remain the property of the Seller, and a deposit will be charged for same on the invoice at the rates in effect at the time of delivery. All said drums or wood barrels of the Seller shall be returned promptly on demand, in as good condition as when received, less ordinary wear and tear, and nothing other than the original contents shall be placed therein.

Force Majeure.—Failure (in whole or in part) or delay on the part of either party in the performance of any of the obligations imposed upon such party hereunder shall be excused and such party shall not be liable for damages or otherwise on account thereof, when such failure or delay is the direct or indirect result of any of the following causes, whether or not existing at the date hereof, and whether or not reasonably within the contemplation of the parties at

the date hereof, namely: Acts of God, earthquakes, fire, flood, or the elements, malicious mischief, insurrection, riot, strikes, lockouts, boycotts, picketing, labor disturbances, public enemy, war (declared or undeclared), compliance with any federal, state or municipal law, or with any regulation, order, rule, recommendation, request or suggestion (including but not limited to, priority, rationing or allocation orders or regulations) of governmental agencies, or authorities or representatives of any government (foreign or domestic) acting under claim or color of authority; total or partial failure or loss or shortage of all or any part of transportation facilities ordinarily available to and used by a party hereto in the performance of the obligations imposed by this agreement, whether such facilities are such party's own or those of others; or, if failure or delay be that of Seller, total or partial loss or shortage of raw or component materials or products ordinarily required by Seller; the commandeering or requisitioning by civil or military authorities of any raw or component materials, products, or facilities, including, but not limited to producing, manufacturing, transportation and delivery facilities; perils of navigation, even when occasioned by negligence, malfeasance, default, or errors in judgment of the pilot, master, mariners or other servants of the ship's owner; or any cause whatsoever beyond the control of either party hereto, whether similar to or dissimilar from the causes herein enumerated.

If, by reason of any of said causes, Seller is unable to make deliveries to all its customers (whether under contract or not) its failure in whole or in part to make deliveries to Purchaser, while delivering to others, shall not be a breach of this agreement and in such event Seller may, but shall not be obligated to, prorate its available supply.

Upon the cessation of the cause or causes for any such failure or delay, performance hereof shall be resumed, but such failure or delay shall not operate to extend the term of this agreement nor obligate either party to make up deliveries or receipts, as the case may be.

Seller may suspend deliveries so long as its cost of performance is increased and the increased cost cannot be recovered by an equivalent increase in the price to be paid by Purchaser.

Nothing herein contained shall excuse Purchaser from

paying Seller, when due, any amounts payable hereunder or pursuant hereto.

Ethyl-Treated Gasoline.—The Purchaser shall handle ethyl-treated gasoline in accordance with rules and regulations now in existence or which may be issued hereafter by any governmental agency having jurisdiction and shall have his employees properly instructed in respect to all said rules and regulations.

If Purchaser is required to obtain a license to handle, distribute or sell ethyl-treated gasoline, this agreement shall not be effective in respect of said gasoline at any time other than when such license is in full force and effect.

Payments.—The Purchaser shall pay for goods without discount or deduction except as stated in this agreement; and if at any time the financial responsibility of the Purchaser shall become impaired or unsatisfactory to the Seller or in the Seller's opinion inadequate to meet the obligations hereunder, cash payments or satisfactory security may be required. A failure to pay any amount when due may at the option of the Seller terminate this agreement as to further deliveries.

Claims.—Any claims for defect or variance in quality or shortage in quantity shall be made, and the Seller shall be notified and given an opportunity to inspect, within two days after the product or goods are delivered, except that if delivery is made in equipment furnished by the Seller such notice and opportunity shall be given before the product or goods are unloaded; and if delivery is made in equipment furnished by the Purchaser such notice and opportunity shall be given before the products or goods move from point of shipment. If equipment furnished by the Seller is in bad order or leaking the Purchaser shall notify the carrier and secure examination by the authorized agent of the carrier as to the condition of the shipment before the same is unloaded. Failure of the Purchaser to comply with these requirements shall operate as a waiver of any and all claims by the Purchaser.

Taxes.—Purchaser assumes the payment of any tax and/or duty now or hereafter imposed, directly or indirectly, by the United States, or any State or foreign country, or governmental subdivision thereof, on (a) the goods covered by this agreement and/or (b) the production, manufacture, transportation, sale, use and/or other han-

dling of said goods, and/or (c) the production, manufacture, transportation, purchase, sale, use, exportation, importation and/or other handling of any material contained in said goods or from which said goods are wholly or partly refined or manufactured, and/or (d) the Seller on account of the sale or measured by the sales price of said goods; and the Seller may bill Purchaser for such tax or duty and the Purchaser shall pay the amount thereof.

Freight Rates.—The prices mentioned in this agreement are based on existing freight rates, and if under this agreement the Seller is to pay freight, then in case the rates are increased or diminished these prices shall be increased or diminished accordingly.

Monthly Shipments.—If this agreement extends over a period of months, shipments or deliveries shall be in equal monthly quantities unless otherwise stated in this agreement, the Purchaser having the option of varying the monthly quantities by ten per cent, provided that, subject to other provisions of this agreement, the agreed quantity must be taken within the time fixed.

Approximate Quantities.—In case deliveries are made in carload, boatload, transport truck or tankwagon lots, deliveries within ten per cent of amounts called for by this agreement or any installment thereof shall be deemed sufficient deliveries by the Seller, only the actual amounts delivered to be paid for.

Trademarks and Names.—Purchaser shall not sell products purchased from others under the trademark or trade name of Seller, unless Seller shall, after analysis thereof, give special consent in writing; Purchaser, however, shall have the right to use the trademarks and trade names of Seller to identify and advertise Seller's products handled by Purchaser on condition that Purchaser shall follow directions as to manner of such use given to Purchaser by Seller.

Assignability.—This agreement shall not be assigned by the Purchaser without the written consent of the Seller.

Approval and Signing By Seller.—Agreements involving $10,000 or less and covering one year or less may be approved and signed on behalf of The Texas Company by any of the following:—by the Manager of National Sales Division; Manager of Roofing Division; Manager of Aviation Division; Manager of Marine Sales Division; and Division Managers and Assistant Division Managers.

All other agreements must be approved and signed by one of the following: by the Company's President; any Vice President; Secretary; General Sales Manager; Assistant General Sales Managers; Assistant to the Vice President of Sales Department; Manager of Dealer Sales; Manager of Industrial Sales; Manager of Operations; Managers and Assistant Managers of Territories of the Sales Department; Manager and Assistant Managers of Asphalt Sales Department; Manager and Assistant Managers of the Railway Traffic and Sales Department; Manager of Bulk, Fuel and Government Sales Division, and Manager of Purchasing Department.

Until approved and signed on its behalf as above stipulated, agreements are not binding on The Texas Company, and commencement of performance hereunder prior to such approval and signing shall in no case be construed as a waiver by The Texas Company of the foregoing requirements.

[fol. 2542] LEASE

Agreement dated the day of ,19 , by and between THE TEXAS COMPANY, a Delaware corporation, having a place of business at (Lessor) and of (Lessee) Witnesseth:

(1)—Premises Leased. Lessor does hereby lease and permit Lessee to enter upon, use and occupy for the purposes and on the conditions herein set forth the following described property situated in the City of , County of , State of , described as follows:

DEFENDANT'S EXHIBIT O

together with the buildings, improvements, fixtures, equipment and facilities of Lessor now located on said premises as follows:

and such other buildings, improvements, tools, fixtures, equipment and facilities owned or leased by Lessor as may now be on said premises or as Lessor may hereafter, during the continuance of this lease, erect or place thereon.

(2)—Term. This lease shall remain in full force and effect for a period of one (1) year beginning

and ending

and thereafter from year to year, subject to termination by either party at the end of the first year or any subsequent year on ten (10) days' prior written notice.

(3)—Rental. Lessee shall pay to the Lessor, as rent for the use of the above described premises:

Strike out Inapplicable Provision

(a) A sum of $ ..... per month; or,

(b) A sum for each month of the term, as follows:

For January $ .....
For February $ .....
For March $ .....
For April $ .....
For May $ .....
For June $ .....
For July $ .....
For August $ .....
For September $ .....
For October $ .....
For November $ .....
For December $ .....

The aforesaid rental shall be payable in advance, on the first day of each and every month; or

(c) A sum of $ ..... per month, plus ..... cents per gallon for each gallon of gasoline delivered to the demised premises for resale in excess of ..... gallons per month, such rental to be payable on the 10th day of each month following the month for which the rental is due.

[fol. 2543] (4)—Use. Lessee shall use the said premises and the buildings, improvements and facilities thereon primarily for the operation of a gasoline service station and the sale of automobile accessories; but in no event shall said premises be used for any unlawful or offensive purpose.

(5)—Maintenance. Lessee shall, during the term of this agreement, maintain the said premises, buildings and equipment, in good repair and in a clean, safe and healthful

condition. In event of Lessee's failure so to do, the Lessor may make the necessary repairs for the account of Lessee. Lessee shall make no change, alteration or substitution in the demised premises, buildings or equipment, except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

(6)—Licenses, etc. Lessee shall obtain all necessary licenses or permits to do business on the leased premises, which may be required by any municipal ordinance, state law or regulation, governmental authority, or otherwise, and shall pay all fees in connection therewith as well as fees imposed by reason of inspections of the leased premises or the equipment situated thereon.

(7)—Re-Delivery. Upon the expiration of this agreement or the termination thereof, Lessee shall yield up and return to Lessor the said premises, and all the said buildings, improvements, fixtures, tools, equipment and facilities in as good condition as when received by Lessee, ordinary wear and tear excepted.

(8)—Hold-over. If, at the expiration or termination of this lease or any extension thereof, Lessee should hold over for any reason, the tenancy of the Lessee thereafter shall be from month to month only and be subject to all of the other terms and conditions of this lease, in the absence of a written agreement to the contrary.

(9)—Gas, Water and Electricity. The Lessee, during occupancy of the leased premises, shall pay all charges accruing for gas, water and electricity. Upon his failure so to do, the Lessor may pay such charges and, in that event, such charges shall be added to the rental payable and shall be collectible as rent.

(10)—Lessee's Default. In event of abandonment of the said premises by Lessee, default by Lessee in the payment of rent or breach of any of the terms, covenants and conditions of this lease, or if bankruptcy or insolvency proceedings are instituted by or against Lessee, or if Lessee becomes insolvent, or if Lessee files a petition for a composition or extension under Section 74 or 77B of the Bankruptcy Act, or if any attachment, garnishment, execution, or any other legal process or proceedings is levied or in-

stituted by anyone other than Lessor against the said premises, or any of the equipment thereon, or if Lessee sells, assigns, pledges, or mortgages the said premises, or any part thereof, or attempts to do so, or allows any lien to attach thereto, or in event of death of Lessee, Lessor may, without notice, immediately terminate this agreement and all Lessee's rights hereunder, and reenter and, in any manner, resume possession of said premises, improvements and facilities, the Lessee hereby waiving all statutory rights inconsistent herewith.

(11)—Waiver. It is agreed that the waiver by Lessor of any breach of any covenant, condition or stipulation contained herein shall not be considered to be a waiver of any subsequent breach of the same or any other covenant, condition or stipulation of this lease nor affect or prejudice any of Lessor's rights or remedies hereunder.

(12)—Leases Held By Lessor. This lease is subject to the terms and conditions of the lease, if any, between Lessor and the owner or tenant of the demised premises, and also any extension, renewal, or new lease on the demised premises; and this lease shall automatically terminate upon the termination, cancellation, or expiration of such lease or such extension, renewal, or new lease, as the case may be, depending upon which is the latest.

(13)—Notice. Notices from Lessor to Lessee shall be sufficient if placed in the United States mail, addressed to the leased premises, and any such notice shall take effect at the time of the mailing thereof. Notices from Lessor to Lessee shall also be sufficient if delivered to Lessee or left on the leased premises in any manner. Notices from Lessee to Lessor shall be sufficient if posted in the United States Mails, postage prepaid, to the Lessor's principal place of business in Lessor's sales district in which the leased premises are located.

(14)—Assignment. The lease hereby given may not be assigned, transferred or sublet, either in whole or in part, by Lessee without the written consent of Lessor. Lessor's consent, however, shall not be unreasonably withheld.

(15)—Approval and Execution by Lessor. This agreement shall not be binding upon the Lessor until approved and signed on its behalf by the Lessor's Executive Officer,

Sales Manager, Assistant Sales Manager, Division Manager or Assistant Division Manager.

In Witness Whereof the Lessor and Lessee have hereunto caused their names to be subscribed the day and year first above written.

THE TEXAS COMPANY

Attest: By

(Lessor)

Witness:

Witness:

(Lessee)

Approved as to: Terms Description

Form

[fol. 2544]

The Texas Company

GENTLEMEN:

By the terms of lease dated , between you, as Lessor, and the undersigned, as Lessee, covering premises located at , in the State of , I agree to make payment of the flat rental to you on the first day of each month, and to make payment of the gallonage rental on the 10th day of each month following the month for which such rental is due.

This is to advise you that I would like such gallonage rental to be paid at the time deliveries of gasoline are made by your adding to the invoice for such gasoline an extra cent(s) for each gallon delivered. You are hereby authorized to collect said gallonage rent in that manner.

The foregoing arrangement may be terminated by either of us at any time.

Yours very truly,

1608

[fol. 2545] EXHIBIT "B"

(Town and Date)

The Texas Company,

Gentlemen:

By the terms of lease dated between you, as lessor, and the undersigned, as lessee, covering premises located at in the State of , I agree to make payment of rental to you as ~~the first day of each~~ month.

This is to advise you that I would like such rental to be paid at the time deliveries of gasoline are made by your adding to the invoice for such gasoline an extra cent-s for each gallon delivered. You are hereby authorized to collect the rent in that manner, the undersigned agreeing that, if at the end of any month the amount so collected by you is less than the total amount of rental due, he will promptly pay you the deficiency.

The foregoing arrangement may be terminated by either of us at any time.

Yours very truly,

[fol. 2546]

DEFENDANT'S EXHIBIT No. P

Sales of Tires, Tubes, Batteries and Other Accessories Through Employee-Operated Service Stations

Washington

Year	Tires & Tubes	Batteries	Other Accessories
1938	$86,482	$12,884	$28,165
1939	103,128	14,758	26,080
1940	119,596	18,746	34,940
1941	176,877	24,772	63,555
1942	34,787	33,855	92,203
1943	108,915	21,349	62,781
1944	91,363	19,013	35,694
1945	86,548	20,147	45,685
1946	122,422	14,220	58,481

Oregon

Year	Tires & Tubes	Batteries	Other Accessories
1938	$37,654	$8,589	$18,777
1939	98,752	9,839	17,386
1940	79,730	12,497	23,293
1941	117,918	16,515	42,370
1942	23,191	22,570	61,469
1943	72,610	14,232	41,854
1944	60,908	12,675	23,796
1945	55,589	10,185	24,066
1946	58,593	6,234	26,843

California

Year	Tires & Tubes	Batteries	Other Accessories
1938	$765,301	$116,743	$158,355
1939	685,704	112,617	144,821
1940	747,207	141,723	196,474
1941	968,730	176,606	280,120
1942	131,743	220,276	387,439
1943	390,297	146,248	229,145
1944	484,651	145,000	166,911
1945	564,163	129,566	201,103
1946	811,466	144,578	304,065

Arizona

Year	Tires & Tubes	Batteries	Other Accessories
1938	$9,799	$1,581	$2,005
1939	8,943	1,509	1,915
1940	9,930	1,963	2,682
1941	13,053	2,618	4,041
1942	1,900	4,413	7,976
1943	4,048	1,183	2,238
1944	—	—	—
1945	—	—	—
1946	—	—	—

Nevada

Year	Tires & Tubes	Batteries	Other Accessories
1938	$2,879	$396	$607
1939	2,421	390	514
1940	2,632	459	657
1941	3,268	487	829
1942	1,294	1,003	3,086
1943	960	238	749
1944	—	—	—
1945	—	—	—
1946	—	—	—

Record of sales for year 1937 are not available.

The above figures are correct in the aggregate, but records are kept by territories rather than by States; therefore, State segregations were obtained on an estimated basis, but are substantially correct.

[fol. 2547] Sales of Union Oil Petroleum Products to Split Pump Accounts

As of December 31, 1947, the only figures available, no split pump accounts were served in the following States:

California.
Oregon.
Washington.
Arizona.
Nevada.
Utah.
Idaho.

[fol. 2548] Sales of Tires, Tubes, Batteries and Other Accessories through Lessee-Operated Service Stations and Dealers

Union Oil Company has no record of the sales of tires, tubes, batteries and other automotive accessories by dealers during the year 1937 to 1946, inclusive.

[fol. 2549] States in Which Petroleum Products, Tires, Tubes, and Batteries are Sold by Employee-Operated Service Stations and by Retail Dealers

In the following States—

California.
Oregon.
Washington.
Arizona.
Nevada.
Utah.
Idaho.

Union Oil petroleum products are sold through employee-operated service stations only in California and Washington, but are sold through retail dealers in each of such States. Tires, tubes, batteries and other automotive accessories are sold by retail dealers in each of such States but are sold by employee-operated service stations only in California and Washington.

[fol. 2550] SERVICE STATION LEASE

This Lease, made this day of , 19 , by and between UNION OIL COMPANY OF CALIFORNIA, a corporation, Lessor, and , Lessee,

Witnesseth:

1. Property: Lessor does hereby lease to Lessee that certain real property situate in the City of , County of , State of , described as follows:

together with all buildings, improvements and equipment thereon consisting of the following, receipt of which in good condition being hereby acknowledged:

DEFENDANT EXHIBIT Q

2. Term: The term of this lease shall commence the day of , 19 , and end the day of , 19 ; provided, however, that either Lessor or Lessee shall have the right at any time during the term or any extension or renewal hereof, to terminate this lease on not less than seven (7) days' written notice to the other. If cancellation be other than at the end of a rental period, rentals for that month shall be reduced accordingly. If Lessee shall hold over after the expiration of the term with Lessor's express or implied consent, it shall be on a month to month tenancy in accordance with the terms hereof and subject to termination as above provided. This lease shall terminate forthwith upon termination of any lease which Lessor may have upon the premises covered hereby.

3. Rental: Lessee agrees to pay Lessor as rental

Said gallonage rental, if any, shall be paid as, when and in the manner specified by Lessor. Any cash rental shall be paid in full on or before the first day of the month for which it is due. Lessee shall keep on said premises accurate records of the amount, kind and grade of gasoline delivered into storage, which records shall be available to Lessor for verification and inspection at any and all reasonable times. If required by Lessor in writing, Lessee agrees

to keep a true and accurate record of the gross revenue derived from all sales of merchandise and services upon the premises. Said record or statement shall be made in duplicate for each calendar month upon forms supplied by Lessor. Both copies of said record or statement shall be acknowledged before a Notary Public on or before the fifth day of each following month and immediately mailed to Lessor, at

4. Taxes and operating expenses: Lessee shall pay all taxes on products, property and improvements of Lessee placed or located upon said premises.

Lessee will conduct all operations on said premises and his business thereon in strict compliance with all laws, ordinances and regulations of governmental authorities; observe all rules of any common carrier which may deliver products thereon; pay all license fees required for the operation of said premises and for the conduct of the business thereon; pay all occupational, business excise or other taxes levied or imposed upon his operations on said premises or upon his business conducted thereon, or upon the handling, storage, withdrawal, distribution, sale or delivery of any and all products handled or sold upon said premises; and will pay all costs of handling, storing, distributing and selling products handled and sold by him, including all water, gas, heat, and electricity or other service used for his operations and in the conduct of his business.

Lessee shall have no authority to employ any persons as agents or employees for or on behalf of Lessor for any purpose, and neither Lessee, nor any other persons performing any duties or engaged in any work at the request of Lessee upon the leased premises shall be deemed to be employees or agents of Lessor, and Lessee shall be exclusively liable for the payment of any and all premiums, contributions and taxes for workmen's compensation insurance, unemployment insurance and for old age pensions, annuities, and retirement benefits now or hereafter imposed by or pursuant to Federal and State laws which are measured by the wages, salaries or other remuneration paid to such employees.

In event of Lessee's failure or refusal to pay any of the above taxes, fees or charges, Lessor may, at its option, pay the same, and the amount so paid shall become and constitute an indebtedness from Lessee to Lessor, and Lessor

shall have the right to withhold and offset against the same any such sums due Lessee from Lessor.

[fol. 255] 5. Possession: Said premises shall be used solely for the purpose of conducting thereon a first-class automobile supply and service station and for the sale of gasoline, lubricating oil, greases, automobile tires, tubes, batteries, accessories, specialties and such other petroleum and other products commonly handled and sold in connection with the conduct of such business, and said premises shall be used for no other purpose whatsoever without the written permission of Lessor.

6. Repairs: Lessee shall not make any additions, improvements or alterations upon the demised premises without Lessor's prior written consent, and Lessee will at his expense keep the premises, improvements and equipment in good condition and repair and free from weeds, debris and rubbish and shall commit no nuisance or waste thereon or thereof. Lessor may, at its option, repair, paint or replace any or all of the improvements on said property. Lessee will not permit or suffer any mechanic's or materialmen's liens or any attachments, judgments or any liens or encumbrances of any kind or nature to be levied or enforced against said premises or the property hereby leased. Lessee shall return said premises, building(s), and equipment to Lessor at the expiration of the term hereof or any sooner termination of this lease in as good condition as received, reasonable wear and tear excepted.

7. Default: Lessee agrees that Lessor may at all times enter upon said premises to view and inspect the same. If Lessee fails to pay the rent as above provided, or to perform any of the covenants and conditions to be performed by Lessee hereunder, Lessor may enter upon said premises and expel Lessee therefrom, with or without process of court, and take full and complete possession thereof, and, at Lessor's option, forthwith terminate all of Lessee's rights hereunder. Waiver by Lessor of any breach by Lessee shall not be construed as a waiver of any subsequent or other breach, or bar strict enforcement of all provisions of the lease thereafter. In case Lessor should bring suit to compel performance of or recover for breach of any covenant, agreement or condition herein written, Lessee agrees to pay to Lessor reasonable attorney's fees to be

added to the amount of the judgment and costs therein recovered.

8. Indemnity: Lessor shall not be liable to Lessee or to any person or persons whomsoever for any damage to property, or for injury to or death of any person arising out of or in any way connected with the possession, maintenance or operation of said premises, improvements or equipment, and Lessee hereby agrees to indemnify and save Lessor harmless from any and all loss or expense which may be incurred by it by reason of such damage or injury.

9. Assignment: Lessee shall not assign or transfer this lease or any interest therein, nor sublease the demised premises in whole or in part, without the written consent of Lessor first obtained, nor may this lease be assigned by operation of law. In the event of the bankruptcy (voluntary or involuntary) or insolvency of Lessee or any assignment by him for benefit of creditors, this agreement at the option of Lessor, shall be deemed terminated and shall not be an asset or property of the trustee in any such proceedings.

10. Notice: Any notices as provided herein may be given to Lessee by delivery in person or by registered mail addressed to Lessee upon or at the above demised premises, and any notices hereunder may be given to Lessor by registered mail addressed to it at
Lessor may change its address at any time by written notice to Lessee.

11. Good Faith Deposit: Company hereby acknowledges receipt of the sum of Twenty-five dollars ($25.00) representing Good Faith Deposit, made by Lessee and it agrees to return the amount to Lessee upon expiration or sooner termination of this Lease, less any monies due Company hereunder by Lessee, at such expiration or sooner termination.

12. Cancellation of previous agreements and modifications: This lease cancels and supersedes any lease or other agreement of prior date between the parties hereto with reference to the possession of the demised premises and covers all the covenants, stipulations and provisions agreed upon by the parties hereto, and no employee, agent or representative of Lessor has authority to change, modify or alter the terms hereof and neither party is nor shall be

bound by any inducement, statement, representation, promise or agreement not in conformity herewith.

In witness whereof the parties hereto have caused this lease to be executed the day and year first hereinabove written.

UNION OIL COMPANY OF CALIFORNIA

By

(Lessor)

(Lessee)

(Lessee)

[fol. 2552] DEFENDANTS' EXHIBIT R

UNION OIL COMPANY OF CALIFORNIA, RETAIL DEALER GASOLINE CONTRACT

This Contract, made , 194 , between UNION OIL COMPANY OF CALIFORNIA, hereinafter called UNION, and , hereinafter called RESELLER:

Witnesseth:

1. Term and Quantity: Union agrees to sell and deliver and Reseller agrees to purchase and receive from Union during the period beginning , 194 , and ending , 194 , and from year to year thereafter until cancelled by either party at the end of any contract year upon at least thirty (30) days written notice, such quantities of gasoline as ordered by Reseller for resale at Reseller's premises at , but in no event less than the minimum quantities specified, and not to exceed, except at Union's option, the maximum quantities specified:

Minimum (Per Contract Year)	Maximum	Unit	Products
	Gallons	76 and 7600	Gasoline

This contract shall cease and terminate upon any termination of reseller's occupancy of premises above described.

2. Grade: Products shall be Union's regular commercial grades generally offered to Union's customers for similar

use and sale at time and place of delivery. Union reserves the right to change or discontinue, from time to time, any such brands or grades.

3. Delivery: Union shall deliver said gasoline on Reseller's orders in fairly even monthly quantities to Reseller's premises; provided, however, that Union shall have the option of making deliveries at its convenience and keeping Reseller's storage filled to capacity. Union will not be required to make deliveries outside of business hours or on Sunday or holidays.

4. Price: Reseller shall pay Union for each delivery Union's applicable posted tank wagon price in effect at time and place of delivery.

The provisions of paragraphs numbered 5 to 11, inclusive, on the reverse side hereof are a part of this contract.

In Witness Whereof, the parties hereto have executed this Contract.

UNION OIL COMPANY OF CALIFORNIA

...Reseller

By

[fol. 253] 5. Payment: The purchase price of products delivered hereunder shall be paid in lawful money of the United States, without discount, at time of delivery. Upon Union's approval, however, which it may withdraw any time, payment for deliveries in any calendar month shall be made to Union by Reseller on or before the tenth day of the month next succeeding that of delivery. If Reseller shall fail to make any payment when due, such failure shall, at Union's option, be deemed a breach of the entire contract and Union may suspend deliveries hereunder until such payment has been made or may terminate this contract. Nothing herein contained shall limit the remedies of Union in the event of a breach.

6. Resale Provisions: Reseller shall not sell, offer, or advertise for sale any gasoline delivered hereunder at a price lower than Union's posted retail price, for gasoline of like grade and quality, in effect at time and for the place of resale. Reseller shall not grant any rebates, discounts or concessions, or resort to any device whereby any pur-

Reseller agrees to resell all gasoline delivered hereunder only under Union's brands and to maintain Union's brands, trade marks and names on the pumps and other facilities through which said gasoline is dispensed, and agrees not to mix, substitute or adulterate said gasoline with any other material.

7. Taxes: The amount of any tax, excise or charge now or hereafter imposed on Union by any Governmental authority upon, incident to, or as a result of the manufacture, storage, withdrawal from storage, transportation, distribution, sale or handling of the gasoline delivered hereunder or measured by the proceeds of such distribution or sale shall, unless it is specified herein that such tax is included in the prices stated, be added thereto and be paid on demand by Reseller to Union.

8. Liabilities: The obligation of the parties hereunder shall be suspended and excused:

(a) if Union is prevented from or delayed in producing, manufacturing, transporting or delivering, in its normal pre-war manner any product or products hereunder or the materials from which such product or products are manufactured or if its costs of performance are abnormally increased; or

(b) if Reseller is prevented from or delayed in taking deliveries hereunder;

because of acts of God, earthquake, fire, flood or the elements, malicious mischief, insurrection, riots, strikes, lockouts, boycotts, picketing, labor disturbances, war; compliance with any directive, order or regulation of any governmental authority or representative thereof acting under claim or color of authority; loss or shortage of products deliverable hereunder or of any part of Union's own or customary transportation or delivery facilities, or for any reason beyond Union's or Reseller's reasonable control, whether or not similar to the foregoing. Whenever such causes in Union's judgment require the restriction of deliveries, Union reserves the right in its discretion to restrict deliveries to Reseller without liability, whether or not delivering to others.

9. Breach of Contract: Time is of the essence hereof. In the event of a breach of any of the provisions of this contract, it may be forthwith terminated at the option of the party not in default. The waiver of any breach shall not be deemed to be a waiver of any other or subsequent breach of the same or other provisions hereof.

10. Entire Contract: This contract shall terminate and supersede, as of the commencement date hereof, all prior contracts between the parties covering the sale and delivery of gasoline for the use herein specified. This contract covers the entire agreement of the parties and no employee, agent or representative of Union has authority to change or modify its terms, and there are no inducements, promises, representations or warranties affecting it.

11. Assignment: This contract shall not be assignable by Reseller or by operation of law without Union's prior written consent, but otherwise shall be binding upon and shall inure to the benefit of the parties, their representatives, successors and assigns.

(Here follows 3 pasters, folios 2554, 2555, 2556, 2557)

[fol. 2554]

DEFENDANT'S EXHIBIT No. 8

Union Oil Company of California

Maximum Number of Retail Outlets Handling Company's Branded Products in the States of Arizona, California, Idaho, Nevada, Oregon, Utah and Washington

		1937	1938	1939	1940	1941	1942	1943	1944	1945	1946
Company Operated	Northwest	See note below		103	107	104	80	80			
	Seattle Division									30	31
	Portland Division									22	22
	Spokane Division						18	16	6		
				103	107	104	107	185	65	52	53
Retail Dealers	Northwest	1,724	1,658	1,441	1,427	1,335	1,030	888	878		
	Seattle Division									454	485
	Portland Division									472	512
	Spokane Division						212	189	204	260	262
		1,724	1,658	1,441	1,427	1,335	1,242	1,077	1,082	1,186	1,259
Total Northwest		1,724	1,658	1,544	1,531	1,439	1,349	1,182	1,147	1,238	1,312
Company Operated	Central	See note below		135	153	119	113	110	43		
	San Francisco Division									22	29
	Sacramento Division									3	5
	Reno District						5	2			
	Fresno Division									8	4
				135	153	119	118	112	43	33	38
Retail Dealers	Central	1,958	1,869	1,544	1,472	1,241	1,054	856	896		
	San Francisco Division									506	559
	Sacramento Division									346	384
	Reno District						166	119	119		
	Fresno Division									206	232
		1,958	1,869	1,544	1,472	1,241	1,220	975	1,015	1,058	1,175
Total Central		1,958	1,869	1,679	1,625	1,360	1,338	1,087	1,058	1,091	1,213
Company Operated	Southwest	See note below		208	242	256					
	Southern Division						253	226	141	38	43
	Los Angeles Division									96	87
	Phoenix District						10	4			
				208	242	256	263	227	141	134	130
Retail Dealers	Southwest	2,253	2,087	1,807	1,381	972					
	Southern Division						721	620	693	258	291
	Los Angeles Division									131	491
	Phoenix District						159	146	158	162	173
		2,253	2,087	1,807	1,381	972	880	766	851	851	955
Total Southwest		2,253	2,087	2,015	1,623	1,228	1,143	993	992	985	1,085

[fol. 2555]

Total Company Operated	See note below		446	502	479	188	181	249	249	221
Retail Dealers	5,935	5,614	4,792	4,280	3,518	3,312	2,818	2,918	3,065	3,380
Total	5,935	5,614	5,238	4,782	4,027	3,830	3,262	3,167	3,314	3,610

For 1937 and 1938 an unknown number of Company Operated Stations is included with Retail Dealers.

[fol. 2556]

Union Oil Company of Califo

Retail Gasoline Sales Estimated

Gallons

		1937	1938	1939	1940	
Arizona	Company Operated	704,000	710,000	725,000	900,000	1
	Retail Dealers	4,270,000	4,010,000	3,745,000	3,400,000	4
		4,974,000	4,720,000	4,470,000	4,300,000	5
California	Company Operated	38,530,729	39,589,044	40,389,675	44,130,184	50
	Retail Dealers	97,181,540	91,500,166	85,407,457	82,141,564	87
		135,712,269	131,089,210	125,797,132	126,271,748	138
Idaho	Company Operated					
	Retail Dealers	1,333,000	1,803,000	1,493,000	2,382,000	2
		1,333,000	1,803,000	1,493,000	2,382,000	2
Nevada	Company Operated	830,000	830,000	830,000	900,000	1
	Retail Dealers	2,260,000	2,462,000	2,610,000	2,450,000	2
		3,090,000	3,292,000	3,440,000	3,350,000	3
Oregon	Company Operated	1,958,778	2,933,981	3,440,446	3,828,462	4
	Retail Dealers	15,413,341	14,020,622	13,427,499	12,537,197	16
		17,372,119	16,954,603	16,867,945	16,365,659	21
Utah	Company Operated				26,000	
	Retail Dealers				64,000	
					90,000	
Washington	Company Operated	3,063,729	4,589,047	5,381,211	6,806,155	7
	Retail Dealers	24,108,046	21,929,690	21,001,985	22,288,351	24
		27,171,775	26,518,737	26,383,196	29,094,506	31
Total	Company Operated	45,087,236	48,652,072	50,766,332	56,590,801	65
	Retail Dealers	144,565,927	135,725,478	127,684,941	125,263,112	138
		189,653,163	184,377,550	178,451,273	181,853,913	203

This information was obtained from Company's basic report of classified gasoline sales and is segrega
Oregon was estimated as approximately 61% and 39%, respectively, which basis was derived from taxable
deducting estimate of sales in Idaho, Nevada, Utah, and Arizona from Central and Southwest Territory sale

alifornia

ated By States

1941	1942	1943	1944	1945	1946
1,053,469	1,181,114	274,720			
4,469,246	4,739,793	5,257,843	7,033,615	8,962,652	11,770,000
5,522,715	5,920,907	5,532,563	7,033,615	8,962,652	11,770,000
50,771,838	45,782,908	28,379,000	20,582,586	33,603,855	43,607,132
87,785,204	66,193,606	62,232,712	76,728,650	114,448,128	179,183,779
138,557,042	111,976,514	90,611,712	97,311,236	148,051,983	222,790,911
2,752,000	2,569,000	2,788,000	2,824,690	2,785,000	3,357,000
2,752,000	2,569,000	2,788,000	2,824,000	2,785,000	3,357,000
1,000,247	850,106	608,116	600,000	600,000	600,000
2,685,000	3,900,000	8,242,000	2,370,000	2,905,000	4,675,000
3,685,247	4,750,106	3,850,116	2,970,000	3,505,000	5,275,000
4,890,276	3,926,035	2,519,932	1,707,882	2,457,767	2,907,768
16,118,979	12,506,752	10,888,942	11,217,852	15,511,211	24,761,186
21,009,255	16,432,787	13,408,874	12,925,734	17,968,978	27,668,954
36,400					
143,600	200,000	150,000	150,000	200,000	300,000
180,000	200,000	450,000	150,000	200,000	300,000
7,335,415	6,140,721	3,941,432	2,786,545	3,844,200	4,548,047
24,178,402	19,561,842	17,031,422	18,302,812	24,261,125	38,729,035
31,513,884	25,702,563	20,972,854	21,089,357	28,105,325	43,277,082
85,087,645	57,880,884	35,723,200	25,677,013	40,505,822	51,662,947
148,132,198	109,670,993	101,590,919	118,626,929	169,073,116	262,270,000
264,920,143	197,551,877	157,314,119	144,303,942	209,578,938	314,438,947

regated as between States on an estimated basis. Division as between Washington and ible gallonage reports furnished by these States. California figures were determined by sales.

Union Oil Company of California

Retail Motor Oil Sales—Estimated by States

Gallons

		1937	1938	1939	1940	1941	1942	1943	1944	1945	1946
Arizona	Company Operated	9,160	9,463	9,083	12,404	15,174	17,182	4,501			
	Retail Dealers	71,100	66,800	62,400	56,600	74,200	79,000	87,400	117,000	149,000	196,000
		80,260	76,263	71,483	69,004	89,374	96,182	91,901	117,000	149,000	196,000
California	Company Operated	506,045	548,838	544,805	619,325	724,446	643,154	459,770	392,209	534,218	692,032
	Retail Dealers	1,282,483	1,259,219	1,223,991	1,347,855	1,431,810	1,360,570	1,433,200	1,834,430	2,454,220	3,101,000
		1,788,528	1,808,057	1,768,796	1,967,180	2,156,256	2,003,724	1,892,970	2,226,639	2,988,438	3,793,032
Idaho	Company Operated										
	Retail Dealers	22,200	30,000	24,900	39,650	45,800	42,800	46,400	47,000	46,400	55,835
		22,200	30,000	24,900	39,650	45,800	42,800	46,400	47,000	46,400	55,835
Nevada	Company Operated	10,966	11,773	11,671	12,783	14,418	11,950	9,809	8,420	9,408	9,652
	Retail Dealers	37,630	41,000	47,530	40,830	54,400	45,000	54,000	39,470	43,450	78,000
		48,596	52,773	59,201	53,613	68,818	56,950	63,809	47,890	52,858	87,652
Oregon	Company Operated	34,517	54,631	61,695	63,880	82,953	73,628	49,895	39,122	53,036	61,806
	Retail Dealers	245,115	224,735	231,524	235,021	274,040	260,573	275,003	288,268	332,514	437,775
		279,632	279,366	293,219	298,901	356,993	334,201	324,898	327,390	385,550	499,581
Utah	Company Operated				450	610					
	Retail Dealers				1,065	2,400	3,330	2,500	2,500	3,330	5,000
					1,515	3,010	3,330	2,500	2,500	3,330	5,000
Washington	Company Operated	53,988	85,448	96,497	113,565	124,429	115,161	78,041	63,831	82,955	96,671
	Retail Dealers	383,385	351,508	362,128	417,814	411,058	407,562	430,132	470,332	520,086	684,725
		437,373	436,956	458,625	531,379	535,487	522,723	508,173	534,163	603,041	781,396
Total	Company Operated	614,676	710,153	723,751	822,407	962,030	861,075	602,016	503,582	679,617	860,161
	Retail Dealers	2,041,913	1,973,262	1,952,473	2,138,835	2,293,708	2,198,835	2,328,635	2,799,000	3,549,000	4,558,335
		2,656,589	2,683,415	2,676,224	2,961,242	3,255,738	3,059,910	2,930,651	3,302,582	4,228,617	5,418,496

This information was obtained from Company's basic report of classified motor oil sales for part of the period involved, together with information obtained from reports of employee-operated, and lessee-operated stations. Sales for other retail outlets was estimated from classified motor oil sales reports for the period such reports were available. Segregation of retail motor oil sales, by States, was accomplished by use of the same formula as for gasoline.

[fol. 2558]

Defendant's Exhibit No. T

Number of Retail Service Station Outlets

As of:	State of:						Total Six States
	Calif.	Ariz.	Nevada	Oregon	Wash.	Idaho	
May 31, 1937	(Detail by States not available)						2,989
May 31, 1938		258	(Detail Other States not available)				2,977
May 31, 1939	1,654	254	35	471	669	21	3,104
May 31, 1940	1,724	255	47	468	658	37	3,189
May 31, 1941	1,700	241	47	455	675	36	3,154
May 31, 1942	1,530	214	41	449	644	40	2,918
May 31, 1943	1,253	158	34	349	538	35	2,367
May 31, 1944	1,280	152	30	337	510	37	2,346
May 31, 1945	1,256	156	32	350	506	41	2,341
May 31, 1946	1,345	184	36	374	544	50	2,533
May 31, 1947	1,384	187	40	391	556	47	2,605

[fol. 2559]

Marketing Department

Total Gasoline Gallonage—Resale Accounts—By States

Year	Arizona	California	Idaho	Nevada	Oregon	Washington	Total
1938	5,995,926	124,391,844	102,367	1,225,690	16,564,850	26,417,934	174,698,611
1939	6,301,697	125,688,486	800,611	1,662,429	19,494,061	29,833,347	183,780,631
1940	6,423,550	125,512,003	1,376,681	1,602,665	20,543,060	29,936,957	185,394,916
1941	6,836,095	132,767,999	1,577,551	1,964,187	21,539,046	32,904,653	197,589,531
1942	5,434,905	96,055,187	1,242,949	1,613,476	15,564,450	24,915,554	144,826,521
1943	5,123,982	80,220,262	1,266,846	1,258,400	12,860,586	21,652,172	122,382,248
1944	4,958,274	69,325,985	1,293,906	1,067,616	12,694,838	20,514,056	109,854,675
1945	6,907,542	92,689,847	1,658,790	1,633,928	15,995,129	24,714,269	143,599,505
1946	9,153,162	119,478,946	2,443,291	2,349,616	20,850,266	32,843,562	187,118,843
Total	57,135,133	966,130,559	11,762,992	14,378,007	156,106,286	243,732,504	1,449,245,481

[fol. 2560]

Marketing Department

Lubricating Oil (Excluding Industrial Oil) and Grease Sales Gallonage
In Certain States

Year	Arizona	California	Nevada	Idaho	Oregon	Washington
1938	271,158	3,510,149	38,863	22,156	393,775	697,533
1939	266,000	3,666,808	47,920	36,174	420,383	761,805
1940	284,893	3,959,407	65,044	50,859	451,901	809,532
1941	303,094	4,318,000	67,670	57,144	506,808	882,922
1942	372,504	3,417,877	51,971	41,564	361,578	634,987
1943	329,745	4,467,684	49,975	40,379	321,552	1,204,623
1944	327,836	4,376,252	53,246	41,968	364,028	719,314
1945	381,836	5,184,081	83,085	55,236	506,413	877,934
1946	445,048	5,171,401	92,028	65,342	497,865	868,219

[fol. 2561] DEFENDANTS' EXHIBIT U

RICHFIELD OIL CORPORATION, SALES CONTRACT

This Agreement, executed this day of , 19 , between RICHFIELD OIL CORPORATION, hereinafter referred to as "Seller", and

hereinafter referred to as "Buyer",

Witnesseth: That

1) Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, as ordered by Buyer during the term hereof, the following petroleum products in yearly quantities not greater than the maximum nor less than the minimum amounts hereinbelow specified for the respective products, the same to be taken in fairly equal monthly quantities:

	Minimum	Maximum
Gasolines	gals.	gals.
Lubricating Oils	gals.	gals.
Greases	lbs.	lbs.

The obligation of Seller to deliver the minimum quantities above specified shall at all times be subject to Seller's right to be exercised within its sole and exclusive discretion with or without notice to discontinue, restrict and or curtail the delivery of and or to change the specifications of any product in the event of shortage of products, crude, base materials, additives, transportation, or labor and or for

any reason similar or dissimilar to the foregoing. Failure of Seller to fill any order or orders by reason of the aforesaid causes shall reduce the purchase obligations of Buyer to that extent. In the event that Seller is unable to make deliveries to all of its customers by reason of any of the causes set forth in this paragraph and yet is able to make some deliveries, its failure to make deliveries in whole or in part to Buyer even while making deliveries of the same or similar commodities to other buyers or consignees or to its own bulk storage and distributing plants, agents and distributors for sale and delivery to the general public, shall not constitute a default by Seller.

2. This agreement shall commence as of the day of , 19 , and shall extend to and including the day of , 19 ; subject, however to termination by Seller at any time during the term hereof by means of a five (5) day notice in writing to Buyer.

3. The products agreed to be sold and delivered hereunder are for resale by Buyer to the retail trade. Buyer agrees not to resell any of the products delivered hereunder which bear, or the label or container of which bears, the trade mark, brand or name of Seller or which is sold through pumps or other vending equipment bearing the trade mark, brand or name of Seller, except at the price designated by Seller as the resale price of such product. Seller shall have the right to change the designated resale price of any of the products to be delivered hereunder at any time or from time to time during the term hereof by written or oral notice directed to Buyer. Attached hereto marked "Schedule A" and hereby made a part of this contract is a schedule of the products to be delivered hereunder as of the date of the commencement of this contract. Set opposite the name of each gasoline ~~listed in~~ Schedule A is a price which Seller hereby designates as the resale price of such gasoline effective at the execution of this contract and until further notice. Seller reserves the right to designate resale prices for all other products listed in said Schedule A for which prices are not designated. Seller shall have the right at any time and from time to time during the term hereof to add to the products listed on said Schedule A any other brand of gasoline, lubricating oils and greases which it may hereafter produce and manufacture and to designate a resale price therefor; and Seller shall also have the right at any time and from time to time during the term hereof to

discontinue sale of any of the products listed in said Schedule A and in such event this agreement shall terminate as to such products but shall remain effective for all other purposes.

4. The prices to be paid by Buyer to Seller for the two grades of gasoline to be sold and delivered hereunder shall be the designated resale prices thereof at the time and place of delivery to Buyer, less 4c per gallon.

Prices to be paid by Buyer to Seller for products other than the aforesaid two grades of gasoline delivered hereunder shall be Seller's posted or list prices to service station dealers in effect at the time and place of delivery. Seller's posted or list prices to service station dealers in respect to such products are set forth in Schedule "A" hereof. The posted price of any such product shall be subject to change by Seller at any time and from time to time during the term hereof.

5. Deliveries hereunder shall be made to Buyer's service station at
State of . All gasoline sold hereunder shall be delivered by tank truck, tank truck and trailer, or such other method of delivery as Seller shall select, and Buyer agrees to maintain storage, which shall conform with all laws and governmental regulations, into which said gasoline may be delivered.

6. In addition to the prices herein provided, Buyer shall pay Seller any and all taxes, increase in taxes or new taxes not included in the prices herein specified, on the products covered by this agreement and or on and or measured by the production, manufacture, transportation, sale, use and or other handling of said products.

7. Buyer shall pay Seller cash on delivery for all products delivered hereunder unless otherwise mutually agreed upon from time to time. No allowance of credit shall prevent Seller from returning at any time, at Seller's election, to a cash on delivery basis.

8. Failure or refusal of Buyer to comply with the terms of this agreement or to promptly make payment when due on all products delivered hereunder shall entitle Seller to suspend deliveries until any breach is remedied or payment is made, or to forthwith terminate this agreement.

9. In the event that performance on the part of the Seller of any or all of the terms of this agreement is prevented or impeded in whole or in part, or in the event that the cost of such performance by Seller is abnormally increased by reason of acts of God, acts of public administrators, war, governmental regulations or restrictions, strikes, labor disturbances, perils of the sea, riots, fires, floods, earthquakes, embargoes, inability to obtain supplies or labor, loss or shortage of producing, manufacturing or transportation facilities and/or any other cause or causes beyond Seller's control, or in the event, by means of statute, law, ordinance, order, mandate, decision, judgment, decree, rule or regulation of any governmental body, board, tribunal, court or official, whether specifically directed against Seller or Buyer hereunder or this contract or operations hereunder, or otherwise, performance hereunder is interfered with or regulated, or any loss or disadvantage is suffered by Seller due to an enforced or resultant reduction in prices or incurrence of liability or penalty under or in connection with any other contract because of the existence of this contract, performance by Seller hereunder shall be excused, and/or Seller shall be privileged to forthwith terminate this agreement without any liability whatever on its part.

10. If Buyer purchases Ethyl or Ethyl-treated gasoline hereunder, he shall sell said gasoline in accordance with the rules and regulations prescribed by the Surgeon General of the United States and other health officers. Unless Buyer complies with the terms and provisions of this paragraph, Seller shall not be obligated to sell or deliver Ethyl or Ethyl-treated gasoline hereunder.

11. Neither this agreement nor any of the rights, powers or privileges of Buyer hereunder shall be assignable by Buyer without the written consent of Seller.

12. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Buyer at the address specified in paragraph 5 hereof, or to Seller at 555 South Flower Street, Los Angeles 13, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Buyer.

13. Buyer hereby acknowledges execution hereof without reliance upon any representations, warranties, promises or assurances other than those written herein.

14. This agreement terminates as of the date of commencement hereof all contracts between the parties hereto or their assignors covering sale and delivery of petroleum products to Buyer's service station described in paragraph 5 hereof.

In Witness Whereof, the parties have executed this agreement the day and year first hereinabove written.

Richfield Oil Corporation
By

Seller

Buyer

[fol. 2563]

(Here follows 1 paster, folio 2563)

SCHEDULE "A"

(For attachment to Sales Contract, Form 337, 308 & 783)

The following schedule of prices is that prevailing on 194

Richfield's designated resale prices as of the date of this Schedule "A" at the point of delivery specified in paragraph 5 of the foregoing Sales Contract, are as follows:

Richfield Ethyl Gasoline ..... ¢ per gallon
Richfield Hi-Octane Gasoline ..... ¢ per gallon

Richfield does not direct resale prices on lubricating oils and greases. Richfield's posted prices exclusive of all taxes, to service station dealers on lubricating oils and greases as of the date of this Schedule "A" f.o.b. Los Angeles, California, are those set forth in the table below. To arrive at prices f.o.b. ..... add Richfield's established differentials between said point and Los Angeles, California, prevailing at time of delivery. As of date hereof said differentials are ..... ¢ per gallon on lubricating oils and ..... ¢ per pound on grease.

		Delivered Price per Gallon			
Automotive Oils	Tax Class	Bulk	Case 24 1 Quart	Case 1 5 Gal. Litho	1 Gal. Can
Richfield Pennsylvania "Premium" Motor Oil SAE 10W-60 Incl.	(T)	80	96	94	
Richlube "Premium" Motor Oil SAE 10-W-60 Incl.	(T)	645	805	785	
Weslube Motor Oil SAE 10-60 Incl.	(T)	325	—	465	
Richfield Cyl Lube	(T)	62	—	76	87
Klenzlube Flushing Oil	(T)	205	—	345	
Richfield Penetrating Oil	(T)	60	—	74	85
Richfield Shock Absorber Oil #1	(T)	—	—	54	65
Richfield Shock Absorber Oil #2	(T)	—	—	59	70

1. Minimum deliveries of automotive oil—5 gallons.

2. Richfield Pennsylvania "Premium" and Richlube "Premium" Motor Oils in cans must be sold in full case lots.

		Delivered Price per Pound						
		Returnable	Non-Returnable Litho Packages					
Greases		L.I.B. and Bulk 5 Gallon Minimum	400# Grease Drum	115# Litho Grease Drum	35# Pail	37# Litho Cans	Case 6/10# Cans	Case 24/1# Cans
Richfield Gear Oil SAE 80	(T)	—	—	—	—	145	—	—
Richfield Gear Oil SAE 90, 140, 250	(T)	105	—	1425	—	115	—	—
Richfield Pennsylvania Transmission Oil SAE 90, 140	(T)	10	—	1075	—	11	—	—
Richfield Chassis Lubricant #0, #1	(NT)	—	1075	115	1175	—	—	—
Richfield Chassis Lubricant #3	(NT)	—	11	1175	12	—	—	—
Richfield Universal Grease #1, #2	(NT)	—	13	1375	14	—	16	—
Richfield Universal Grease #3	(NT)	—	14	1475	15	—	17	—
Richfield Water Proof Grease	(NT)	—	—	—	—	—	28	31

(T)—Product is subject to Federal Lubricating Oil Tax.

(NT)—No Federal Tax.

part of a month shall be duly prorated on the basis of the rent for said month as herein specified. In addition to the aforesaid rental, Lessee shall pay to Lessor as rental for each month of the effective term hereof a sum computed by multiplying the total number of gallons of gasoline in excess of the number of gallons set forth below, received by Lessee on the demised premises during the month for which payment is being made, for resale and distribution therefrom, by the rates following, to-wit:

For the month of January	¢ per gallon of gasoline in excess of	gallons
For the month of February	¢ per gallon of gasoline in excess of	gallons
For the month of March	¢ per gallon of gasoline in excess of	gallons
For the month of April	¢ per gallon of gasoline in excess of	gallons
For the month of May	¢ per gallon of gasoline in excess of	gallons
For the month of June	¢ per gallon of gasoline in excess of	gallons
For the month of July	¢ per gallon of gasoline in excess of	gallons
For the month of August	¢ per gallon of gasoline in excess of	gallons
For the month of September	¢ per gallon of gasoline in excess of	gallons
For the month of October	¢ per gallon of gasoline in excess of	gallons
For the month of November	¢ per gallon of gasoline in excess of	gallons
For the month of December	¢ per gallon of gasoline in excess of	gallons

said payments to be made on or before the tenth day of the next succeeding calendar month. In case of fractional monthly periods the number of gallons shown in the last column above will be duly prorated and the gallonage rental will be paid on the gallons of gasoline delivered in excess of such prorated amount.

Use

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a gasoline service station thereon is prevented by law or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon, is taken for public use, this lease shall forthwith terminate.

Maintenance

3. Lessee shall, during the term thereof, maintain the demised premises, improvements, buildings, trees, shrubs, lawns, fixtures and equipment in good order and repair and in a clean and safe condition. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make the necessary repairs for the account of Lessee and/or may terminate this lease. Lessee shall make no material change or alteration in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

[fol. 2563]

Redelivery

4. Upon the expiration or sooner termination of this agreement, Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear and use excepted, together with the value of any equipment lost or damaged beyond repair. Lessor shall not be liable to Lessee for any property left by Lessee in or on the demised premises.

Act of God

5. Should a substantial part of the improvements on the demised premises be destroyed by act of God, fire, explosion, the elements or any cause not due to the negligence, neglect or willful act of Lessee and be thereby rendered unsatisfactory for the conduct of Lessee's business thereon, Lessor shall be privileged to terminate this lease or repair the premises in which event rent payable by Lessee hereunder shall be abated for the time and to the extent that he is prevented from using the premises or any part thereof.

Utilities

6. During the occupancy of the demised premises, Lessee shall pay all charges accruing for gas, water, electricity,

telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Upon failure of Lessee in this respect, Lessor may, but shall not be obliged to, pay such charges and lien obligations, and add the same to the rental payable hereunder.

Default

7. Should Lessee at any time fail to faithfully and diligently comply with the terms, conditions and covenants of this lease on his part to be performed, or should Lessee abandon or vacate the demised premises, or should Lessee default in payment of rent at the time due, or should bankruptcy or insolvency proceedings under the bankruptcy laws of the United States or any state be instituted by or against Lessee, or should any attachment, garnishment, execution or any other legal proceedings be levied or instituted by anyone other than Lessor against the premises or any of the equipment thereon in any action in which Lessee is named as defendant, or should Lessee attempt to sell, assign, pledge or mortgage the said premises or any part thereof, or allow any lien to attach thereto, or should Lessee enter into a composition for the benefit of creditors, Lessor may, without notice, immediately terminate this lease and re-enter and resume possession of the premises, improvements, buildings, fixtures and equipment.

Waiver

8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

Assignment

9. This lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained.

Indemnity

10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occurring upon the demised premises or arising out of any of the operations

[fol. 2564] RICHFIELD OIL CORPORATION

Service Station Lease

This lease made and entered into this day of , 19 , by and between Richfield Oil Corporation, hereinafter referred to as "Lessor", and , hereinafter referred to as "Lessee",

Witnesseth:

Description of Property

That in consideration of the payment of the rents and the performance of the covenants and agreements herein set forth to be kept and performed on the part of Lessee, Lessor does hereby lease to Lessee that certain real property situated in the City of , County of , State of , together with all appurtenances thereunto belonging and with all improvements, buildings, fixtures, equipment and facilities situated thereon, all as are fully described in Schedule "A" hereof.

Term

To have and to hold unto Lessee for the period commencing , 19 , and continuing until terminated by either party by means of a written notice of election to terminate served on the other party in the manner prescribed in Paragraph "13" hereof at least twenty-four hours prior to the effective date of termination specified in such notice.

Rent

It is further agreed:

1. Lessee shall pay to Lessor as rent for the premises and property leased hereunder the following sums per month:

January	$	July	$
February	$	August	$
March	$	September	$
April	$	October	$
May	$	November	$
June	$	December	$

All such rentals shall be payable monthly in advance on the first day of the calendar month. Rent for any fractional

of Lessee, his agents or employees, thereon, or thereabout during the term hereof.

Prior Leases

11. Although this instrument is designated as a lease, it is nevertheless understood that it is in fact a sublease and is subordinate and subject to all terms, provisions and conditions contained in that certain lease dated the ..... day of ....., 19..., by and between ....., as lessor, and ....., as lessee (to whose interest Lessor herein has succeeded). The relinquishment, expiration or sooner termination of said lease shall of itself result in the termination of this lease without notice and without liability on the part of Lessor herein, and Lessor shall be privileged to terminate this lease forthwith by notice at a time not exceeding 10 days prior to the termination, relinquishment, or expiration of the above lease so as to permit Lessor to remove its property from the demised premises. Lessor herein shall be privileged to amend, modify of extend the above described lease without notice to Lessee herein in which event this lease shall become subject to the terms, provisions and conditions of said lease as modified, amended or extended. Lessor makes no warranty that the aforesaid lease will not by its terms expire, or is not subject to termination prior to the earliest termination date herein provided.

Attorney's Fees

12. In the event Lessor shall employ an attorney or attorneys in connection with the pursuit of any of Lessor's rights, powers or privileges hereunder, Lessee shall pay, in addition to all other sums hereunder, a reasonable attorney's fee.

Notices

13. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Lessee at the address of the demised premises, or at the address hereinafter provided, or to Lessor at 555 South Flower Street, Los Angeles 13, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Lessee.

DESCRIPTION OF REAL PROPERTY

Street and Number | Town | State

Legal Description:

BUILDINGS AND IMPROVEMENTS

Quantity (See Note)	•	DESCRIPTION	Make and Model	Type or Size	Serial No.	Company Equip. No.
		Service Station				
		Canopies				
		Restrooms				
		Lubrication & Washrack Room				
		Tire and Battery Shop				
		Electroliers				
		Floodlights (Incl. Lamps)				
(ft.)		Fencing				

RETAILING EQUIPMENT

Quantity (See Note)	•	DESCRIPTION	Make and Model	Type or Size	Serial No.	Company Equip. No.
		550 Gal. U. G. Tanks				
		600 to 1000 Gal. U. G. Tanks				
		Over 1000 Gal. U. G. Tanks				

		Restrooms				
		Lubrication & Washrack Room				
		Tire and Battery Shop				
		Electroliers				
		Floodlights (Incl. Lamps)				
(ft.)		Fencing				

RETAILING EQUIPMENT

Quantity (See Note)	•	DESCRIPTION	Make and Model	Type or Size	Serial No.	Company Equip. No.
		550 Gal. U. G. Tanks				
		600 to 1000 Gal. U. G. Tanks				
		Over 1000 Gal. U. G. Tanks				
		Blind Pumps				
		Computing Pumps				
		Computing Pumps				
		Computing Pumps				
		Meter Pumps				
		Meter Pumps				
		Meter Pumps				

SCHEDULE A

NOTE: The absence of any specific quantity inserted against any item of equipment in this column shall be indicative of "None". In this column letter "C" indicates Company-Owned, "L" indicates Lessor-Owned.

RETAILING EQUIPMENT (CONT'D)

Quantity (See Note)	•	DESCRIPTION	Make and Model	Type or Size	Serial No.	Company Equip. No.
		Visible Pumps				
		Visible Pumps				
		Air Compressors				
		Battery Chargers				
		Cash Register				
		Gas Buggies				
		Hi-Boys				
		Hi-Boys				
		Hi-Boys				
		Hi-Boys				
		Hi-Boys				
		Hi-Boys				
		Hoist				
		Lube Cabinet				
		Lube Unit				
		Grease Guns				
		Grease Guns				
		Utility Guns				
		Utility Guns				
		Chassis Lube Unit				
		Extensions				
		Adapters				
		Adapters				
		Universal Joint Gun				
		Steering Gear Gun				
		Power Gun				
		Pressure Tanks				
		Meters				
		Utility Guns				
		Utility Guns				
		Chassis Lube Unit				
		Extensions				
		Adapters				
		Adapters				
		Universal Joint Gun				
		Steering Gear Gun				
		Power Gun				
		Pressure Tanks				
		Meters				
		Hi-Pressure Air Hoses				
		Air Operated Pressure Guns				
		Nozzles				
		Air Wells and Towers				
		Lubes				
		Electric & Oil Heaters				
		Neon Signs				
		Neon Signs				
		Car Washing Machines				
		Neon Towers				

SCHEDULE A

NOTE: The absence of any specific quantity inserted against any item of equipment in this column shall be indicative of "None". In this column letter "C" indicates Company-Owned, "L" indicates Lessee-Owned.

MOVABLE AND OTHER OPERATING EQUIPMENT

Quantity (See Note)		DESCRIPTION
		Adapters, Hoist (Co. No. _____)
		Auto Lift, Hydraulic
		Auto Jacks
		_____
		_____
		Basins, Wash in Restroom
		Baskets, Waste Paper
		Battery Service Kit
		Boards, Richfield "A"/"I"
		Brooms
		Brushes
		Buckets
		_____
		_____
		Cans, Emergency _____ Gal.
		Cans, Galv. Oil Service _____ Gal.
		Cans, Oil
		Cans, Rubbish
		Cans, Sanitary Step-on
		Cans, Test
		Can Openers for Canned Oil
		Cash Box and Desk Complete
		Containers, Grease
		_____
		_____
		Dispensers, Powdered Soap
		Dispensers, Seat Cover
		Dispensers, Toilet Paper
		Drums, Corrugated w/Faucet 30 Gal.
		Drums, Klenzine w/Faucet 50 Gal.
		Drums, Ser. Sta. w/Faucet 15 Gal.
		_____
		_____
		Fans

		Drums, Ser. Sta. w/Faucet 15 Gal.

		_____
		_____
		Fans
		Fire Extinguishers, 1 Qt.
		Fire Extinguishers, 2½ Gal.
		Flashlights
		Fountains, Drinking
		Funnels
		_____
		_____
		Gauges, Air
		Gauge Sticks
		_____
		_____
		Hammer, Ball-Pein
		Hand Oilers
		Hose, Air
		Hose Gasoline
		Hose Garden (ft.)
		_____
		_____
		Incinerator (Co. or Ser. No. _____)
		_____
		Lamps _____ Watt
		Lamps _____ Watt
		Lamps _____ Watt
		Lamps _____ Watt
		Lube Check Boxes, Complete
		_____
		_____
		_____
		_____
		_____

Quantity (See Note)		DESCRIPTION
		Measures—Swingspout Oil, 1 Pt.
		Measures— " " 1 Qt.
		Measures— " " ½ Gal.
		Measures— " " 1 Gal.
		Mirrors, in Restrooms w/Shelves
		_____
		_____
		Oiler, Spring
		_____
		_____
		Padlocks with Keys
		Pails, Gem
		Pails, Water
		Pliers
		Pump, Hand—for Bbls.
		_____
		_____
		Racks, Canned Oil Display
		Racks, Oil, Bottle w/ _____ Bottles
		Racks, Tire
		Rim Tool Tire Spreader
		_____
		_____
		Safe
		Scraper, Putty Knife
		Screw Drivers
		Shackle Clamps
		Shackle Bars
		Spark Plug Cleaner and Tester
		Signs, Porcelain
		Signs, _____
		Signs, _____
		Signs, _____
		Signs, _____

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		Signs, _____
		Stools
		_____
		_____
		_____
		Tanks, Tube Testing
		Toilets, Comp. in Restrooms
		_____
		_____
		_____
		_____
		_____
		Wrenches, Crescent
		Wrenches, Hub Cap
		Wrenches, Socket
		Wrenches, Plug
		Wrenches, Stillson
		_____
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		_____
		_____

SCHEDULE A

NOTE: The absence of any specific quantity inserted against any item of equipment in this column shall be indicative that the Jobber does not own such item. "C" indicates Company-Owned, "J" indicates Jobber-Owned.

16321

[fols. 2569-2570] 3-C Service Station Lease

This lease, made and entered into this day of , 19 ; by and between , herein called "Lessor," (whether one or more and when referred to by pronoun the singular neuter gender will be used), and Richfield Oil Corporation, herein called "Lessee."

Witnesseth:

That in consideration of the payment by Lessee of the rent herein specified and of the mutual covenants herein contained, Lessor hereby demises and leases unto Lessee and Lessee takes and rents from Lessor that certain real estate situated in the City of , County of , State of , described as follows:

together with all appurtenances thereunto belonging, and together also with the buildings, facilities, equipment and other improvements located thereon and listed in the inventory hereto attached marked "Exhibit A," which inventory is by this reference incorporated in this lease and made a part hereof for all purposes, and with all other improvements, if any, hereafter erected or placed thereon by Lessor.

To have and to hold the above demised and leased real estate and improvements (hereinafter referred to collectively as "premises"), and all rights, privileges and appurtenances thereunto belonging, unto Lessee, its successors and assigns, for the term commencing the day of , 19 , and ending the day of , 19 , unless this lease shall be sooner terminated in a manner herein provided.

The following shall constitute the covenants of this lease, and the parties hereto agree as follows:

1. Lessee shall pay as full rental for said real and personal property during the effective term of this lease the following amounts at the following times:

All rent shall be paid in lawful money of the United States by check or draft to the order of Lessor and mailed to

or to such other address as Lessor may from time to time designate in writing.

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum products upon the demised premises or the operation of a gasoline service station thereon is prevented by law, or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon is taken for public use, this lease shall forthwith terminate.

3. Lessee shall use the demised premises and improvements with due and reasonable care and on termination hereof shall deliver up said premises and improvements unto Lessor in good order and condition, damage and depreciation due to reasonable use, ordinary wear and tear, fire, storm, flood, earthquake, action of the elements, strike, riot, labor disturbances, war and unavoidable casualties and matters beyond the control of Lessee excepted. Lessor agrees to commence, within ten (10) days after receipt of notice in respect thereto from Lessee, all repairs and or replacements necessary in order to keep and maintain the leased property in a suitable condition for the operation by Lessee of a gasoline service station.

[fol. 2571] 4. Lessee shall have the right and privilege of erecting, placing, operating and maintaining on said premises all buildings, structures, improvements, driveways, tanks, containers, piping, signs, appliances and equipment of any nature on, under and above the ground that it may require or desire to use in operating, transacting and conducting on said premises the business of storing, marketing and distributing petroleum products and automobile accessories by means of a gasoline and oil filling and service station, or by other marketing methods, and by any other business incident to that of a service station; it being understood that Lessee is not hereby restricted from using said premises for any other lawful purpose. Lessee shall have

the further right and privilege of painting all or any part of the property leased hereunder so long as said property is not thereby unreasonably damaged; and Lessee may make such changes as it desires to any existing structures and improvements, but any structural alterations or changes made to improvements belonging to Lessor shall become part of the real estate and may not be removed by Lessee at the end of the term of this lease.

5. At any time during the term of this lease and upon termination thereof by lapse of time or in any manner and within a reasonable time thereafter Lessee may, at its option and expense, remove from said premises any and all buildings, structures, improvements, money safes or chests, equipment, appliances or other property of whatsoever nature placed or owned by it thereon, whether or not affixed to the premises or to any improvement on the premises (except alterations made to Lessor's improvements), and after such removal shall restore the surface of the ground to its uniform and even condition, free from all excavations and debris and within said time Lessee at its option may paint out and/or otherwise remove from the premises its trade colors together with all trade signs, names and insignia, including signs and insignia belonging to Lessor, and irrespective of the manner in which said signs and insignia are attached to the premises, provided, however, that if Lessee at such time shall be in default in the payment of rents or any other charges hereunder, Lessor shall have a lien on said buildings, structures and improvements to secure payment of such rents or charges. Should Lessee fail to remove any buildings, structures and other property belonging to it located upon the demised premises within a reasonable time after such termination of this lease, title to the same shall pass to Lessor.

6. Lessee shall have the right to make proper connections with any and all water, gas and power lines and pipe lines on or serving the demised premises, and may continue the use and service thereof during the term of this lease. Lessee shall be liable for and agrees to pay all charges for water, gas, electric current, telephone and any other public utility or service used by it.

7. Lessor agrees to pay before delinquency all general and special taxes and special assessments with respect to the

premises leased hereunder. Lessee agrees to pay all taxes levied and assessed or to be levied and assessed upon its own improvements and property located on said premises, it being understood that Lessee shall not be liable for any special taxes or special assessments save with respect to Lessee's own property.

8. Lessor agrees not to conduct or permit to be conducted on premises controlled by Lessor, if any, within two hundred (200) yards of the premises demised and leased, any business venture from which petroleum products other than those supplied by Lessee are sold or distributed.

9. Lessor warrants that title to the premises demised hereby is vested in Lessor, free and clear of all liens, clouds and encumbrances except and current taxes not delinquent, and that there are no municipal or other governmental restrictions, leases or other agreements with respect to said premises that would affect the use of all or any part thereof for a gasoline service station. In the event Lessor's interest in the demised premises is a leasehold interest Lessor agrees to faithfully fulfill and perform the terms of the lease to which this lease is subject so as not to cause any default of Lessor in any of the terms thereof. Lessor shall be liable to Lessee for any damages suffered by Lessee by virtue of a termination of any such prior lease, arising out of default of Lessor herein thereunder.

10. In the event Lessee shall be in default in the payment of rentals or other charges hereunder or shall otherwise breach its covenants or obligations hereunder, and shall be and remain in default for a period of thirty (30) days after notice from Lessor to it of such default. Lessor shall have the right and privilege of terminating this lease and declaring the same at an end and of entering upon and taking possession of said premises, and shall have the remedies now or hereafter provided by law for recovery of rent, repossession of the premises and damages occasioned by such default.

In the event Lessor shall breach or be in default in the performance of any of the covenants or obligations on it herein imposed, and shall remain in default for a period of thirty (30) days after notice from Lessee to it of such default, Lessee shall have the right and privilege of ter-

minating this lease and declaring the same at an end, and or shall have the remedies now or hereafter provided by law for recovery of damages occasioned by such default.

The waiver by either party of any breach of this lease by the other, or of any right to which such party is entitled, shall not be deemed a waiver by such party in any other instance, or for any other breach or right.

In any action between the parties hereto, their successors or assigns, for a breach or for the enforcement of any of the terms or conditions of this lease, a reasonable attorney's fee, to be fixed by the court, shall be added to and be made a part of the recoverable costs in such action, in favor of the successful party.

11. If at any time during the term hereof Lessor, or if there be more than one, any Lessor, shall be indebted to Lessee on any account whatsoever, Lessee shall have the right to apply any rental accrued or accruing upon said unpaid indebtedness and Lessor agrees that the amount so applied shall constitute rental payment hereunder. In particular, but without limitation as to the foregoing, Lessee may offset against rentals payable hereunder rentals payable by Lessor to Lessee under any sublease of the property leased hereunder.

12. In the event Lessor during the term hereof receives from a third party a bona fide offer to purchase the leased premises, or any part thereof, or any holdings of Lessor of which the leased premises are a part, and shall decide to sell the same for the amount named in said offer, Lessor shall promptly give to Lessee written notice of the terms of such offer and of Lessor's willingness to sell for the price offered, and Lessee shall have the option and privilege of purchasing the premises subject to such offer at said price and shall notify Lessor in writing within ten (10) days after the date it receives notice from Lessor whether Lessee will purchase said premises for the amount specified in said offer. In the event Lessee shall not give Lessor within said ten (10) day period of Lessee's election to purchase for the amount specified in said offer, Lessor may thereafter sell said premises to the party making the offer, subject, however, to the leasehold estate and rights herein granted to Lessee. Irrespective of whether or not said premises are sold to such party, notice of any subsequent bona fide offers acceptable to Lessor shall be given to Lessee upon the same

terms and conditions for acceptance or refusal, as hereinabove provided.

13. In the event of any termination of that certain Operator's Lease executed concurrently herewith, by the terms of which Lessee herein as Lessor therein subleases the premises demised hereby, Lessee shall be privileged to forthwith terminate this lease by means of a ten (10) day notice in writing to Lessor. Any notice of the aforesaid nature may be served by Lessee at any time after but not before any termination of said Operator's Lease.

14. All notices given under this instrument shall be in writing and may be given by depositing the notice in the United States registered mail, postage prepaid, enclosed in an envelope addressed to the party to be notified at such party's address as shown in this instrument, or at any other known address of any Lessor, and the date upon which such notice is so mailed shall be treated as the date of service; or such notice may be served on Lessor in person or on an officer or manager of Lessee. If there be more than one Lessor, notice to any of them shall constitute notice to all.

15. This agreement and each and all of the covenants, obligations and conditions hereof, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of Lessor, and the successors and assigns of Lessee. Although designated in the singular number as "Lessor," if there be more than one, they and each of them shall be jointly and severally bound by the obligations, conditions and covenants herein imposed. Lessee may assign this lease or sublet the premises or any part thereof without the consent of Lessor, but in the event of any such assignment or subletting Lessee shall at all times remain liable to Lessor for payment of rents and for the faithful performance of all obligations imposed upon Lessee hereunder.

16. The parties hereto agree that neither the making, execution nor delivery of this lease has been induced by any representation, statement, warranty or agreement other than those herein expressed, and that all proposals, negotiations and representations with reference to matters covered by this lease are merged in this instrument. The par-

ties understand and agree that regardless of any partial performance or other circumstance, this lease shall not become binding upon Lessee until it has been signed on its behalf by its President, Vice President or duly authorized agent, and that no amendment or modification hereof shall be valid unless evidenced in writing and signed by one of such officers or agents.

In witness whereof, the parties hereto have executed this lease the day and year first above written.

_____ Lessor.

Richfield Oil Corporation,
By _____

_____ Lessee.

[fol. 2572] 3-C

Operator's Lease

This lease, executed this _____ day of _____; 19____, between Richfield Oil Corporation, herein called "Lessor," and _____, herein called "Lessee," (whether one or more and when referred to by pronoun the singular neuter gender will be used).

Witnesseth:

That in consideration of the payment by Lessee of the rent herein specified and of the mutual covenants herein contained, Lessor hereby demises and leases unto Lessee and Lessee takes and rents from Lessor those certain premises in the City of _____, County of _____, State of _____, more particularly described on the reverse side hereof in paragraph numbered "15" hereof, together with all appurtenances thereunto belonging, and together also with the buildings, facilities and equipment embraced within the terms of the lease referred to in paragraph numbered "11" hereof, and such buildings, facilities and equipment as may be placed upon said premises by Lessor herein under and pursuant to said latter lease.

To have and to hold unto Lessee for the term commencing the _____ day of _____, 19____, and ending the _____ day of _____, 19____, unless this lease shall be sooner terminated in a manner herein provided.

The following shall constitute the covenants of this lease, and the parties hereto agree as follows:

1. Lessee shall pay to Lessor as rent for said real and personal property during the effective term of this lease the amounts set forth on the reverse side hereof in paragraph numbered "16" hereof, at the times and in the manner as in said paragraph provided.

2. The improvements, buildings and facilities erected and located on the demised premises are designed for the operation of a gasoline service station thereon, and Lessee shall use the demised premises and property primarily for such purpose; and in no event shall said premises be used for any unlawful or offensive purpose, nor shall Lessee commit any nuisance thereon. In the event the sale of gasoline or other petroleum upon the demised premises or the operation of a gasoline service station thereon is prevented by law, or the whole, or such part of the demised premises as will render the balance thereof unsatisfactory for the operation of a gasoline service station thereon, is taken for public use, this lease shall forthwith terminate.

3. Lessee shall, during the term hereof, maintain the demised premises, improvements, buildings, fixtures and equipment in good order and repair and in a clean and safe condition at Lessee's cost and expense. In the event of Lessee's failure so to do, Lessor may enter upon the demised premises and make necessary repairs for the account of Lessee and/or may terminate this lease. Lessee shall make no change, alteration or substitution in the demised premises, improvements, buildings, fixtures and equipment except such as may be necessary to enable Lessee to continue business on said premises, unless the consent in writing of Lessor be first obtained.

4. Upon the expiration or sooner termination of this agreement Lessee shall yield up and return to Lessor the demised premises, improvements, buildings, fixtures and equipment in as good condition as when received by Lessee, damage and depreciation due to ordinary wear and use excepted; and shall pay Lessor the cost of restoring the premises, improvements, buildings, fixtures and equipment to the condition in which they were at the time when received by Lessee, damage and depreciation due to ordinary wear

and use excepted, together with the value of any equipment lost or damaged beyond repair.

5. Should any of the improvements on the demised premises be destroyed by act of God, fire, explosion, the elements or any cause not due to the negligence, neglect or willful act of Lessee and be thereby rendered unsatisfactory for the conduct of Lessee's business thereon, Lessor shall be privileged to terminate this lease or repair the premises, in which event rent payable by Lessee hereunder shall be abated for the time and to the extent that he is prevented from using the premises or any part thereof.

6. During the occupancy of the demised premises Lessee shall pay all charges accruing for gas, water, electricity, telephone and other public utilities, and shall not permit any liens to attach to the demised premises. Lessee shall also pay the total amount of all taxes and assessments levied or imposed against all property of Lessee located on the premises. Upon failure of Lessee in this respect Lessor may, but shall not be obligated to, pay such taxes and/or charges and add the same to the rental payable hereunder.

7. In the event Lessee shall at any time during the term hereof be in default in respect to the payment of rent herein provided or in respect to the performance of any other of the provisions hereof, or should Lessee abandon or vacate the demised premises, Lessor shall be privileged at its option to resume possession of the demised premises, with or without process of law; thereupon, at Lessor's option, this lease and all of the rights of Lessee hereunder shall forthwith terminate. In the event of such re-entry by Lessor, Lessor shall be privileged to possess and to hold all property of Lessee which may be situated on the demised premises as a pledge to secure payment by Lessee of any sum or sums which may be due or owing to Lessor by Lessee on any account or accounts whatever. The foregoing remedies shall be in addition to those now or hereafter provided by law.

8. The waiver of any breach hereunder shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or a different provision of this agreement.

9. This Lease shall not be assignable, voluntarily or by operation of law, nor shall Lessee sublet any part of the demised premises without the written consent of Lessor first having been obtained. This lease shall not become an asset of the estate of Lessee but shall terminate on his death.

10. Lessee agrees to indemnify and hold Lessor free and harmless from any and all claims for damage to property or injury to or death of person or persons occurring upon the demised premises or arising out of any of the operations of Lessee, his agents or employees, thereon or thereabout during the term hereof.

11. Although this instrument is designated as a lease, it is nevertheless understood that it is in fact a sublease and is subordinate and subject to all the terms, provisions and conditions contained in that certain lease dated the day of , 19 ; by and between , as lessor, and , as lessee (to whose interest Lessor herein has succeeded). The expiration, relinquishment or termination of said lease for any cause whatsoever, or any transfer, re-assignment or relinquishment by Lessor of its interest in said lease of the demised premises shall of itself result in the termination of this lease without any notice or action whatever on the part of Lessor or Lessee herein. Any termination hereof shall be without any liability on the part of Lessor, and in the event of such termination Lessor shall be obligated only to return to Lessee any rent paid in advance hereunder, which obligation shall exist only in the event that at the time of such termination Lessee shall not be in default in respect to any of the provisions hereof.

12. In the event of any termination of that certain Operator's Sales Contract executed concurrently herewith by and between the parties hereto, covering the purchase and sale of Lessee's entire requirements of certain petroleum products for resale from the premises demised hereby, Lessor shall be privileged to terminate this lease by means of a five (5) day notice in writing to Lessee.

13. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States mail, addressed to Lessee at the address of the demised

premises, or to Lessor at 555 South Flower Street, Los Angeles 13, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Lessee.

14. This agreement shall not be binding upon Lessor until executed by a duly authorized officer or agent of Lessor and a fully executed copy hereof delivered to Lessee.

In witness whereof, the parties have executed this lease as of the date first hereinabove written.

Richfield Oil Corporation,
By
Lessor.

Lessee.

[fol. 2573] 3-C Operator's—Sales Contract

This agreement, executed this day of , 19 , between Richfield Oil Corporation, hereinafter referred to as "Seller," and , hereinafter referred to as "Buyer," (whether one or more and when referred to by pronoun the singular neuter gender will be used).

Witnesseth: that

1. Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase from Seller, during the period commencing , 19 , and ending , 19 , Buyer's entire requirements of the following automotive petroleum products for resale from the service station hereinafter mentioned, provided, however, that in no event shall Buyer purchase and receive during any calendar month of the term hereof less than the minimum quantities specified below:

	Minimum
Gasolines	gals.
Lubricating Oils	gals.
Greases	lbs.

2. The products agreed to be sold and delivered hereunder are for resale by Buyer to the retail trade. Buyer

agrees not to resell any of the products delivered hereunder which bear, or the label or container of which bears, the trade mark, brand or name of Seller or which is sold through pumps or other vending equipment bearing the trade mark, brand or name of Seller, except at the price designated by Seller as the resale price of such product. Seller shall have the right to change the designated resale price of any of the products to be delivered hereunder at any time or from time to time during the term hereof by written or oral notice directed to Buyer. Attached hereto marked "Schedule A" and hereby made a part of this contract is a schedule of the products to be delivered hereunder as of the date of commencement of this contract. Set opposite the name of each gasoline listed in said Schedule A is a price which Seller hereby designates as the resale price of such gasoline effective at the execution of this contract and until further notice. Seller reserves the right to designate resale prices for all other products listed in said Schedule A for which prices are not designated. Seller shall have the right at any time and from time to time during the term hereof to add to the products listed on said Schedule A any other brand of gasoline, lubricating oils and greases which it may hereafter produce and manufacture and to designate a resale price therefor, and Seller shall also have the right at any time and from time to time during the term hereof to discontinue sale of any of the products listed in said Schedule A and in such event this agreement shall terminate as to such products but shall remain effective for all other purposes. Seller reserves the right at any time or from time to time to change the specifications of any product to be sold and delivered hereunder.

2. The prices to be paid by Buyer to Seller for Seller's Ethyl or First Structure Gasoline and Seller's Hi-Octane or Second Structure Gasoline shall be Seller's designated resale prices thereof at time and place of delivery to Buyer, less 4c per gallon. Should Seller elect to market a Third Structure Gasoline, the price therefor shall be Seller's designated resale price thereof at time and place of delivery to Buyer, less 5c per gallon. Seller shall have the right to change its said designated resale prices at any time or from time to time during the term hereof by written or oral notice directed to Buyer.

Prices to be paid by Buyer to Seller for products other than gasoline delivered hereunder shall be Seller's posted or list prices to service station dealers in effect at the time and place of delivery. Seller's posted or list prices to service station dealers in respect to such products are set forth in Schedule "A" hereof. The posted price of any such products shall be subject to change by Seller at any time and from time to time during the term hereof.

4. Deliveries hereunder shall be made to Buyer's service station at _____, _____ State of _____. All gasoline sold hereunder shall be delivered by tank truck, tank truck and trailer, or such other method of delivery as Seller shall select, and Buyer agrees to maintain storage, which shall conform with all laws and governmental regulations, into which said gasoline may be delivered.

5. In addition to the prices herein provided, Buyer shall pay Seller any and all taxes, increase in taxes or new taxes not included in the prices herein specified on the products covered by this agreement and or on and or measured by the production, manufacture, transportation, sale, use and or other handling of said products.

6. Buyer shall pay Seller cash on delivery for all products delivered hereunder unless otherwise mutually agreed upon from time to time. No allowance of credit shall prevent Seller from returning at any time, at Seller's election, to a cash on delivery basis.

7. Failure or refusal of Buyer to strictly comply with the terms of this agreement or to promptly make payment when due on all products delivered hereunder shall entitle Seller to suspend deliveries until any breach is remedied or payment is made, or to forthwith terminate this agreement.

8. Seller shall be privileged at any time and from time to time during the term hereof to paint in its colors and insignia the buildings and equipment constituting the service station mentioned in paragraph numbered "4" hereof. In the event of any termination of this agreement prior to the expiration date set forth in paragraph numbered "1" hereof Buyer shall forthwith pay to Seller a sum equal to the total of all monies expended by Seller in performing such painting during the two (2) year period preceding such termination.

9. In the event that performance on the part of the Seller of any or all of the terms of this agreement is prevented or impeded in whole or in part, or in the event that the cost of such performance by Seller is abnormally increased by reason of acts of God, acts of public administrators, war, governmental regulations or restrictions, strikes, labor disturbances, perils of the sea, riots, fires, floods, earthquakes, embargoes, inability to obtain supplies or labor, loss or shortage of producing, manufacturing or transportation facilities and/or any other cause or causes beyond Seller's control, or in the event, by means of statute, law, ordinance, order, mandate, decision, judgment, decree, rule or regulation of any governmental body, board, tribunal, court or official, whether specifically directed against Seller or Buyer hereunder or this contract or operations hereunder, or otherwise, performance hereunder is interfered with or regulated, or any loss or disadvantage is suffered by Seller due to an enforced or resultant reduction in prices or incurrence of liability or penalty under or in connection with any other contract because of the existence of this contract, performance by Seller hereunder shall be excused and/or Seller shall be privileged to forthwith terminate this agreement without any liability whatever on its part. Failure of Seller to fill any order or orders by reason of the aforesaid causes shall reduce the purchase obligations of Buyer to that extent. In the event that Seller is unable to make delivery to all of its customers by reason of any of the causes set forth in this paragraph and yet is able to make some deliveries, its failure to make deliveries in whole or in part to Buyer, even while making deliveries of the same or similar commodities to other buyers or consignees or to its own bulk storage and distributing plants, agents and distributors for sale and delivery to the general public, shall not constitute a default by Seller.

10. Buyer agrees to comply with all laws, statutes, and ordinances of all governmental authorities.

11. Neither this agreement nor any of the rights, powers or privileges of Buyer hereunder shall be assignable by Buyer without the written consent of Seller.

12. Any demands or notices required or permitted to be served hereunder shall be deemed properly served when deposited, postage prepaid, registered, in the United States

mail, addressed to Buyer at the address specified in paragraph 4 hereof, or to Seller at 555 South Flower Street, Los Angeles 13, California. In lieu of mailing, as aforesaid, such demands and notices may be personally served upon Buyer.

13. In the event by means of statute, law, ordinance, order, mandate, decision, judgment, decree, rule or regulation of any governmental authority, board, tribunal, court or official, whether specifically directed against either party hereto or this contract or the 3-C transaction of which this contract is a part, or operations hereunder, or otherwise, performance hereunder is interfered with or regulated, or any loss or disadvantage is suffered by Seller due to an enforced or resultant reduction in prices or incurrence of any penalty under or in connection with any other contract because of the existence of the contract or said 3-C transaction, Seller may forthwith terminate any or all instruments constituting said 3-C transaction.

14. Buyer hereby acknowledges execution hereof without reliance upon any representations, warranties, promises or assurances other than those written herein.

15. This agreement terminates as of the date of commencement hereof all contracts between the parties hereto, or their assignors, covering sale and delivery of petroleum products to Buyer's service station described in paragraph 4 hereof.

In witness whereof, the parties have executed this agreement the day and year first hereinabove written.

RICHFIELD OIL CORPORATION

By

[fol. 2574]

SCHEDULE "A"

(For attachment to Sales Contract, Form 337, 398 & 783)

The following schedule of prices is that prevailing on ..... 194 .....

Richfield's designated resale prices as of the date of this Schedule "A" at the point of delivery specified in paragraph 5 of the foregoing Sales Contract, are as follows:

Richfield Ethyl Gasoline ..... ¢ per gallon
Richfield Hi-Octane Gasoline ..... ¢ per gallon

Richfield does not direct resale prices on lubricating oils and greases. Richfield's posted prices, exclusive of all taxes, to service station dealers on lubricating oils and greases as of the date of this Schedule "A" f.o.b. Los Angeles, California, are those set forth in the table below. To arrive at prices f.o.b. ..... add Richfield's established differentials between said point and Los Angeles, California, prevailing at time of delivery. As of date hereof said differentials are ..... ¢ per gallon on lubricating oils and ..... ¢ per pound on grease.

		Delivered Price per Gallon			
Automotive Oils	Tax Class	Bulk	Case 24 1 Quart	Case 1 5 Gal. Litho	1 Gal. Can
Richfield Pennsylvania "Premium" Motor Oil SAE 10W-60 Incl.	(T)	80	96	94	—
Richlube "Premium" Motor Oil SAE 10-W-60 Incl.	(T)	645	805	785	—
Weslube Motor Oil SAE 10-60 Incl.	(T)	325	—	465	—
Richfield Cyl-Lube	(T)	62	—	76	87
Klenzlube Flushing Oil	(T)	205	—	345	—
Richfield Penetrating Oil	(T)	60	—	74	85
Richfield Shock Absorber Oil #1	(T)	—	—	54	65
Richfield Shock Absorber Oil #2	(T)	—	—	59	70

1. Minimum deliveries of automotive oil—5 gallons.
2. Richfield Pennsylvania "Premium" and Richlube "Premium" Motor Oils in cans must be sold in full case lots.

		Delivered Price per Pound						
		Returnable	Non-Returnable Litho. Packages					
Greases		L.I.B. and Bulk 5 Gallon Minimum	400# Grease Drum	115# Litho Grease Drum	35# Pail	37# Litho Cans	Case 6/10# Cans	Case 24/1# Cans
Richfield Gear Oil SAE 80	(T)	—	—	—	—	115	—	—
Richfield Gear Oil SAE 90, 140, 250	(T)	105	—	1125	—	115	—	—
Richfield Pennsylvania Transmission Oil SAE 90, 140	(T)	10	—	1075	—	11	—	—
Richfield Chassis Lubricant #0, #1	(NT)	—	1075	115	1175	—	—	—
Richfield Chassis Lubricant #3	(NT)	—	11	1175	12	—	—	—
Richfield Universal Grease #1, #2	(NT)	—	13	1375	14	—	16	—
Richfield Universal Grease #3	(NT)	—	14	1475	15	—	17	—
Richfield Water Proof Grease	(NT)	—	—	—	—	—	28	31

(T)—Product is subject to Federal Lubricating Oil Tax.

(NT)—No Federal Tax.

DEFENDANTS' EXHIBIT V

LOS ANGELES BASIN

COMPETITIVE SERVICE STATION

[fol. 2575]	Hollywood Branch	Van Nuys Branch	No. Springs Street Br.	Hunt. Park Branch	Glendale Branch	Pasadena Branch	Los Angeles District	% of Available Gallonage	% of Stations	Long I Brar
Chevron Dealers SS	48	8	30	15	27	26	154		3.50%	1
Gallonage	3,656,952	683,496	3,054,444	1,228,920	2,870,928	2,853,792	13,348,532	2.19%		1,72
Standard Stations, Inc. SS	121	13	34	15	21	31	235		5.40%	1
Gallonage	33,022,512	5,115,756	9,593,436	3,794,712	5,464,056	8,998,884	65,989,356	10.09%		3,88
General Petroleum SS	183	30	82	81	46	77	499		11.46%	4
Gallonage	24,757,600	3,435,600	15,936,200	10,381,560	10,500,000	9,877,000	74,887,960	11.46%		5,64
Texas Company SS	112	32	49	17	32	54	296		6.80%	4
Gallonage	17,655,400	2,627,800	8,006,600	2,682,400	8,072,400	6,127,800	45,172,400	6.91%		2,46
Union Oil Company SS	134	50	52	22	50	86	394		9.05%	2
Gallonage	23,563,400	4,325,300	8,610,000	3,462,200	9,100,000	11,862,200	60,923,100	9.32%		3,42
Associated Oil Co. SS	71	18	13	11	28	46	187		4.29%	
Gallonage	11,450,600	2,343,600	4,205,600	1,415,400	4,900,000	4,187,400	28,502,600	4.40%		62
Shell Oil Company SS	120	26	48	38	33	47	321		7.39%	2
Gallonage	21,373,800	3,221,200	10,025,400	5,019,000	6,468,000	6,043,800	52,154,200	7.98%		2,61
Richfield Oil Company SS	120	36	44	30	42	60	332		7.67%	2
Gallonage	20,056,400	4,426,800	8,194,200	3,141,400	7,315,000	6,290,200	49,427,000	7.56%		2,50
Minor and Secondary SS	596	185	259	398	213	353	1934		44.44%	24
Total Gallonage	75,771,500	19,684,000	42,420,400	37,587,620	42,844,200	43,649,200	261,965,920	10.09%		22,05
Total Service Stations	1514	398	641	557	492	780	4352			44
Total Gallonage	231,308,164	45,866,552	110,055,280	68,716,212	97,534,584	99,890,276	653,371,068	100%	100%	46,64

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DEFENDANTS' EXHIBIT V

LOS ANGELES BASIN

MPETITIVE SERVICE STATION REPORT

	% of Available Gallonage	% of Stations	Long Beach Branch	San Pedro Branch	El Segundo Branch	Whittier Branch	Long Beach District	% of Available Gallonage	% of Stations	Los Angeles Basin	% of Available Gallonage	% of Stations
		3.50%	19	7	41	7	74		4.02%	228		3.68%
	2.19%		1,724,304	660,852	4,912,944	1,032,828	8,330,928	2.97%		22,679,460	2.48%	
		5.40%	14	4	33	5	56		3.04%	201		4.70%
	10.09%		3,880,668	1,277,052	9,193,944	984,696	15,336,360	5.48%		81,325,716	8.71%	
		11.46%	48	18	95	29	190		10.33%	689		11.13%
	11.46%		5,649,000	3,298,400	16,662,800	2,727,200	28,337,400	10.12%		103,225,360	11.06%	
		6.80%	40	20	69	21	150		8.16%	446		7.20%
	6.91%		2,460,400	2,064,000	11,824,400	2,049,600	20,398,400	7.28%		65,570,800	7.02%	
		9.05%	27	19	51	17	114		6.24%	508		8.24%
	9.32%		3,129,000	3,511,200	12,115,600	1,794,800	20,550,600	7.38%		81,473,700	8.73%	
		4.29%	6	19	42	10	77		4.19%	264		4.26%
	4.40%		625,800	2,637,600	6,007,400	1,057,000	10,327,800	3.68%		38,830,400	4.18%	
		7.39%	25	10	54	15	104		5.65%	425		6.86%
	7.98%		2,612,400	2,520,000	11,138,400	1,330,000	17,600,800	6.28%		69,755,000	7.47%	
		7.67%	22	15	40	11	88		4.78%	420		6.78%
	7.56%		2,501,800	2,301,000	8,139,600	1,085,000	14,028,000	5.01%		63,455,000	6.80%	
		44.44%	248	83	498	156	985		53.59%	2919		47.15%
	10.09%		22,057,700	15,724,800	92,500,800	14,712,600	144,995,900	51.80%		406,961,820	43.60%	
			449	195	923	271	1838			6190		
	100%	100%	46,641,072	33,995,504	172,495,888	26,773,724	279,906,188	100%	100%	933,277,256	100%	100%

[fol. 2579] DEFENDANT'S EXHIBIT NO. Z

Gasoline Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Total Taxable Motor Fuel Sales

000 Gallons

California

	State Total	Retail Gallonage S. S. Inc.	Retail Gallonage Dealers	% of Total S. S. Inc.	% of Total Dealers
1931	1,401,545	65,149	71,251	4.6	5.1
1932	1,352,570	75,752	53,873	5.6	4.0
1933	1,322,890	72,842	41,186	5.5	3.1
1934	1,334,233	82,543	52,717	6.1	4.0
1935	1,482,194	84,558	46,191	5.7	3.1
1936	1,625,794	86,599	75,558	5.3	4.6
1937	1,727,881	94,154	70,922	5.4	4.1
1938	1,720,048	97,307	79,160	5.7	4.6
1939	1,810,764	104,355	71,804	5.8	4.0
1940	1,890,775	109,314	85,347	5.8	4.5
1941	2,122,039	130,737	102,522	6.2	4.8
1942	1,890,765	119,887	89,188	6.3	4.7
1943	1,629,792	81,163	71,020	5.0	4.4
1944	1,667,752	64,974	65,971	3.9	4.0
1945	1,994,698	103,794	87,918	5.2	4.4
1946	2,640,651	209,587	135,455	7.9	5.1
1947	.....	.....	.....	....	....

Sources: California State Board of Equalization Company Reports for Retail Gallonages.

[fol. 2580] Gasoline Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Total Taxable Motor Fuel Sales

000 Gallons

Oregon

	State Total	Retail Gallonage S. S. Inc.	Retail Gallonage Dealers	% of Total S. S. Inc.	% of Total Dealers
1931	170,357	4,782	25,633	2.8	15.0
1932	155,645	4,512	22,509	2.9	14.5
1933	158,779	5,285	25,318	3.3	15.9
1934	165,978	6,217	25,799	3.7	15.5
1935	183,005	6,018	26,688	3.3	14.6
1936	211,915	6,246	23,946	2.9	11.3
1937	223,283	6,329	21,990	2.8	9.8
1938	225,964	6,968	20,812	3.1	9.2
1939	241,170	8,197	19,733	3.4	8.2
1940	260,122	9,229	23,518	3.5	9.0
1941	297,967	11,398	28,770	3.8	9.7
1942	263,804	9,451	18,861	3.6	7.1
1943	229,905	7,378	17,913	3.2	7.8
1944	231,860	5,916	15,967	2.6	6.9
1945	269,103	9,042	22,075	3.4	8.2
1946	376,288	18,467	36,198	4.9	9.6

Source: "State of Oregon Motor Vehicle Fuels Tax, Sales by Companies," prepared by Earl E. Newbry, Secretary of State. Company Reports for Retail Gallonages.

(P. 1650)

DEFENDANTS EXHIBIT NO. W

BAKERSFIELD DISTRICT

To Mojave

To Mojave

To Victorville

LONG BEACH DISTRICT

LOS ANGELES VENTURA

To Gorman

SAN FERNANDO

VAN NUYS

GLENDALE

PASADENA

MONROVIA

LOS ANGELES SALES DISTRICT

10-23-42

To Long Beach

To Santa Ana

To Fullerton

LOS ANGELES CO. ORANGE CO.

SAN BERNARDINO CO.

To San Bernardino

To Ontario

To Pomona

WHITTIER

AZUSA

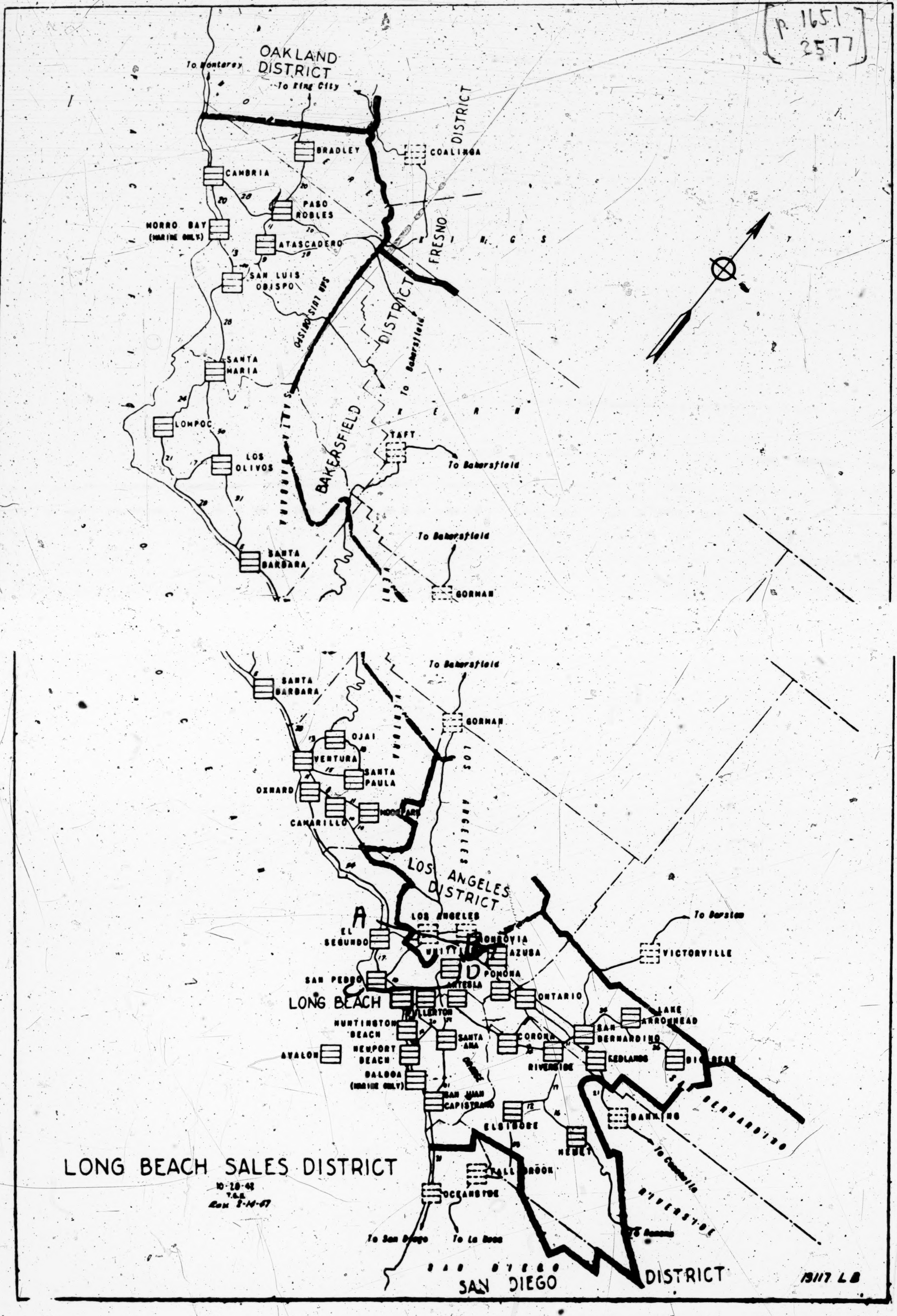
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LOS ANGELES

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DEFENDANTS EXHIBIT NO. X

[p. 1651
2577]



Note:

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[fol. 2578]

DEFENDANT'S EXHIBIT Y

SAN FRANCISCO BAY AREA

COMPETITIVE SERVICE STATION REPORT

	Oakland Branch	East Oakland Branch	Richmond Branch	Hayward Branch	Oakland District	% of Available Gallonage	% of Stations	San Francisco Branch, North Side	San Francisco Branch, South Side	South San Francisco Branch
Chevron Dealers SS	5	22	25	1	53		5.63%	32	21	11
Gallonage	706,836	2,283,864	3,817,992	43,036	6,851,728	4.81%		3,664,981	2,759,629	1,856,170
Standard Stations, Inc. SS	38	27	8	3	76		8.08%	45	15	10
Gallonage	10,322,952	6,019,776	2,913,276	1,109,580	20,365,584	14.30%		10,673,969	4,003,088	3,233,518
Central Petroleum SS	45	44	7	1	97		10.30%	35	28	14
Gallonage	4,871,687	5,489,341	997,708	150,000	11,508,736	8.06%		6,063,262	5,036,546	1,698,941
Texas Company SS	33	30	13	3	79		8.39%	23	22	7
Gallonage	3,525,172	3,636,326	1,592,732	590,515	9,344,745	6.56%		4,675,264	4,376,516	954,882
Union Oil Company SS	35	35	20	3	93		9.88%	30	25	16
Gallonage	8,505,970	4,431,178	2,839,602	725,323	16,502,073	11.59%		6,680,295	5,195,399	2,448,731
Associated Oil Co. SS	45	36	4	3	88		9.35%	35	31	22
Gallonage	6,918,121	6,146,394	1,024,457	1,049,924	15,138,896	10.63%		7,363,553	6,144,861	3,031,228
Shell Oil Company SS	54	38	10	4	106		11.26%	35	24	20
Gallonage	6,755,145	5,267,368	1,443,795	1,102,987	14,569,295	10.23%		8,612,874	4,733,083	2,980,913
Richfield Oil Company SS	26	22	6	2	56		5.98%	31	18	5
Gallonage	3,577,504	2,433,985	1,094,011	344,729	7,450,229	5.25%		4,995,982	2,795,125	727,256
Minor and Secondary SS	125	125	39	4	293		31.13%	85	73	41
Total Gallonage	17,579,915	17,640,445	4,341,853	1,090,838	40,653,051	28.55%		11,399,388	11,640,845	3,889,195
Total Service Stations	406	379	132	24	941			351	257	146
Total Gallonage	62,763,302	53,348,677	20,065,426	6,206,932	142,384,337	100%	100%	64,129,568	46,685,092	20,820,834

REPORT

	co South San Francisco Branch	Palo Alto Branch	San Rafael Branch	San Francisco District	% of Available Gallonage	% of Stations	San Francisco Bay Area	% of Available Gallonage	% of Stations
Chevron Dealers SS	11	13	5	82		8.25%	135		6.98%
Gallonage	1,856,170	1,225,395	388,492	9,894,667	6.14%		16,746,395	5.52%	
Standard Stations, Inc. SS	10	12	5	87		8.76%	163		8.43%
Gallonage	3,233,518	3,170,988	1,548,358	22,629,921	14.06%		42,995,505	14.17%	
Central Petroleum SS	14	15	15	107		10.77%	204		10.54%
Gallonage	1,698,941	1,917,198	1,847,352	16,563,339	10.29%		28,072,075	9.25%	
Texas Company SS	7	9	6	67		6.79%	146		7.54%
Gallonage	954,882	1,000,367	846,084	11,853,113	7.36%		21,197,858	6.99%	
Union Oil Company SS	16	13	8	92		9.26%	185		9.59%
Gallonage	2,448,731	1,641,253	1,268,260	17,233,938	10.70%		33,736,011	11.13%	
Associated Oil Co. SS	22	13	12	113		11.37%	201		10.39%
Gallonage	3,031,228	1,799,311	1,642,433	19,981,386	12.41%		35,120,282	11.58%	
Shell Oil Company SS	20	24	9	112		11.27%	218		11.27%
Gallonage	2,980,913	2,530,863	1,158,271	20,016,004	12.43%		34,585,299	11.40%	
Richfield Oil Company SS	5	13	8	75		7.55%	131		6.77%
Gallonage	727,256	1,280,068	1,036,899	10,835,330	6.73%		18,285,559	6.02%	
Minor and Secondary SS	41	33	26	258		25.98%	551		28.49%
Total Gallonage	3,889,195	2,591,894	2,471,018	31,992,340	19.88%		72,645,391	23.94%	
Total Service Stations	146	145	94	993			1934		
Total Gallonage	20,820,834	17,157,337	12,207,207	161,000,038	100%	100%	303,384,375	100%	100%

[fol. 2581]

Gasoline Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Total Taxable Motor Fuel Sales

000 Gallons

Washington

	State Total	Retail Gallonage S. S. Inc.	Retail Gallonage Dealers	% of Total S. S. Inc.	% of Total Dealers
1931	270,901	8,232	36,266	3.0	13.4
1932	245,242	7,729	32,016	3.2	13.1
1933	234,862	8,090	33,516	3.4	14.3
1934	260,790	9,197	37,224	3.5	14.3
1935	273,737	8,977	37,374	3.3	13.7
1936	313,739	8,919	34,008	2.8	10.8
1937	329,066	9,560	32,052	2.9	9.7
1938	331,885	10,375	34,940	3.1	10.5
1939	343,319	10,922	40,853	3.2	11.9
1940	369,861	12,445	30,315	3.4	8.2
1941	414,573	16,327	36,712	3.9	8.9
1942	382,839	14,443	24,998	3.8	6.5
1943	322,523	10,105	22,967	3.1	7.1
1944	319,775	7,162	20,590	2.2	6.4
1945	366,127	10,733	27,108	2.9	7.4
1946	491,301	23,021	43,606	4.7	8.9

Source: State of Washington, Dept. of Licenses, Liquid Fuel Tax Division Company Reports for Retail Gallonages.

[fol. 2582]

Gasoline Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Total Taxable Motor Fuel Sales

000 Gallons

Arizona

	State Total	Retail Gallonage S. S. Inc.	Retail Gallonage Dealers	% of Total S. S. Inc.	% of Total Dealers
1931	99,564	1,210	11,994	1.2	12.0
1932	66,695	2,321	9,520	3.5	14.3
1933	63,819	2,640	9,033	4.1	14.2
1934	72,570	3,179	10,220	4.4	14.1
1935	80,472	3,370	9,626	4.2	12.0
1936	95,405	3,956	11,804	4.1	12.4
1937	103,158	4,222	11,291	4.1	10.9
1938	101,515	4,239	11,220	4.2	11.1
1939	105,677	4,687	13,954	4.4	13.2
1940	111,315	5,505	11,632	4.9	10.4
1941	129,668	6,610	14,200	5.1	11.0
1942	119,106	6,153	8,601	5.2	7.2
1943	100,856	4,851	7,406	4.8	7.3
1944	99,427	4,589	7,114	4.6	7.2
1945	122,306	6,746	10,578	5.5	8.6
1946	170,075	11,973	16,526	7.0	9.7

Sources: Motor Vehicle Division, Arizona State Highway Department. Company Reports for Retail Gallonages.

[fol. 2597]

Tire Replacement Shipments (1)

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Totals

Utah

Year	State Total	Retail Sales S.S. Inc.	Retail Sales Dealers	% of State Total S.S. Inc.	% of State Total Dealers
1933	136,475	132	21	.1	.0
1934	132,332	294	14	.2	.0
1935	117,624	380	67	.3	.1
1936	126,555	803	918	.6	.7
1937	128,511	1,480	2,471	1.2	1.9
1938	131,439	1,345	3,008	1.0	2.3
1939	163,495	1,616	3,440	1.0	2.1
1940	155,521	2,131	3,566	1.4	2.3
1941	175,535	2,620	4,008	1.5	2.3
1942	41,698	322	668	.8	1.6
1943	96,443	1,911	3,239	2.0	3.4
1944	134,838	1,539	3,851	1.1	2.9
1945	182,392	2,056	4,350	1.1	2.4
1946	327,450	3,530	10,229	1.1	3.1

Source: Rubber Manufacturer's Association, Company Records.
(1) Excludes Exports and Original Equipment. U.S.A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations."

[fol. 2598]

Tire Replacement Shipments (1)

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Totals

Seven Western States

Year	State Total	Retail Sales S.S. Inc.	Retail Sales Dealers	% of State Totals S.S. Inc.	% of State Totals Dealers
1933	4,055,250	132,350	10,523	3.3	.3
1934	3,957,038	146,900	13,583	3.7	.3
1935	3,678,690	126,538	33,646	3.4	.9
1936	3,910,850	133,881	54,025	3.4	1.4
1937	3,840,393	123,361	79,685	3.2	2.1
1938	3,964,571	134,531	88,472	3.4	2.2
1939	4,931,458	146,960	95,549	3.0	1.9
1940	4,651,488	151,952	96,370	3.3	2.1
1941	5,246,115	154,101	95,438	2.9	1.8
1942	1,208,348	9,463	13,107	.8	1.1
1943	2,583,550	63,690	57,838	2.5	2.2
1944	3,759,608	53,062	65,273	1.4	1.7
1945	5,209,118	79,094	77,689	1.5	1.5
1946	9,181,698	176,496	179,462	1.9	2.0
1947	8,990,553	207,294	213,304	2.3	2.4

Source: Rubber Manufacturer's Association, Company Records.
(1) Excludes Exports and Original Equipment. U.S.A. total apportioned by States on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations."

[fol. 2583]

Gasoline Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Total Taxable Motor Fuel Sales

000 Gallons

Nevada

	State Total	Retail Gallonage S. S. Inc.	Retail Gallonage Dealers	% of Total S. S. Inc.	% of Total Dealers
1931	22,549	303	3,576	1.3	15.9
1932	21,025	337	3,078	1.6	14.2
1933	21,689	573	4,173	2.6	19.2
1934	27,155	813	5,259	3.0	19.4
1935	30,155	941	5,580	3.1	18.5
1936	34,235	1,272	6,764	3.7	19.8
1937	37,369	1,376	6,659	3.7	17.8
1938	39,949	1,529	7,220	3.8	18.1
1939	45,653	1,891	8,678	4.1	19.0
1940	40,125	1,897	5,508	4.7	13.7
1941	46,109	2,681	6,582	5.8	14.3
1942	46,862	2,887	4,299	6.2	9.2
1943	33,363	1,533	4,041	4.6	12.1
1944	29,774	1,182	3,719	4.0	12.5
1945	38,174	1,818	5,093	4.8	13.3
1946	55,079	3,785	8,287	6.9	15.0

Sources: Nevada Tax Commission. Company Reports for Retail Gallonages.

fol. 2584]

Gasoline Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Total Taxable Motor Fuel Sales

000 Gallons

Idaho

	State Total	Retail Gallonage S. S. Inc.	Retail Gallonage Dealers	% of Total S. S. Inc.	% of Total Dealers
1931	59,293	150	5,396	0.3	9.1
1932	50,799	141	5,099	0.3	10.0
1933	50,877	196	5,167	0.4	10.2
1934	63,521	240	5,727	0.4	9.0
1935	70,341	300	7,952	0.4	11.3
1936	82,768	576	9,639	0.7	11.6
1937	90,748	889	8,927	1.0	9.8
1938	91,207	981	9,679	1.0	10.6
1939	97,167	1,299	11,649	1.3	12.0
1940	103,968	1,592	9,468	1.5	9.1
1941	113,108	1,993	11,419	1.8	10.1
1942	99,914	1,890	7,382	1.9	7.4
1943	89,192	1,276	7,291	1.4	8.2
1944	91,789	930	6,962	1.0	7.6
1945	107,600	1,307	8,792	1.2	8.2
1946	143,304	2,417	14,576	1.7	10.2

Sources: "Motor Fuel Tax—Idaho", Prepared by Pac. Coast Petroleum Industries Committee, Los Angeles. Company Records for Retail Gallonage

[fol. 2585]

Gasoline Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Total Taxable Motor Fuel Sales

000 Gallons

Utah

	State Total	Retail Gallonage S. S. Inc.	Retail Gallonage Dealers	% of Total S. S. Inc.	% of Total Dealers
1931	60,731	.....	4,114	....	6.8
1932	54,373	.....	4,317	....	7.9
1933	54,687	127	4,332	0.2	7.9
1934	62,858	156	4,805	0.2	7.6
1935	69,323	155	6,096	0.2	8.8
1936	78,462	581	7,390	0.7	9.4
1937	85,742	837	7,857	1.0	9.2
1938	87,850	878	10,112	1.0	11.5
1939	94,349	1,109	13,378	1.2	14.2
1940	103,232	1,560	9,570	1.5	9.3
1941	114,249	2,311	11,596	2.0	10.1
1942	113,242	3,001	7,753	2.7	6.8
1943	101,921	2,534	8,341	2.5	8.2
1944	95,682	1,809	7,834	1.9	8.2
1945	111,260	2,476	10,374	2.2	9.3
1946	146,644	4,649	13,920	3.2	9.5

Sources: State Tax Commission of Utah.
Company Records for Retail Gallonage.

[fol. 2586]

Gasoline Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Total Taxable Motor Fuel Sales

000 Gallons

Seven Western States

	State Total	Retail Gallonage S. S. Inc.	Retail Gallonage Dealers	% of Total S. S. Inc.	% of Total Dealers
1931	2,084,940	79,825	158,229	3.8	7.6
1932	1,946,949	90,791	130,412	4.7	6.7
1933	1,907,604	89,753	122,724	4.7	6.4
1934	1,987,105	102,344	141,751	5.2	7.1
1935	2,189,226	104,319	139,506	4.8	6.4
1936	2,442,319	108,149	169,109	4.4	6.9
1937	2,597,187	117,367	159,698	4.5	6.1
1938	2,599,814	122,277	173,143	4.7	6.7
1939	2,738,099	132,460	180,049	4.8	6.6
1940	2,879,398	141,542	175,358	4.9	6.1
1941	3,237,713	172,057	211,801	5.3	6.5
1942	2,916,532	157,712	161,082	5.4	5.5
1943	2,507,552	108,842	138,979	4.3	5.5
1944	2,536,059	86,562	128,157	3.4	5.1
1945	3,009,268	135,916	171,938	4.5	5.7
1946	4,023,342	273,899	268,568	6.8	6.7
1947	4,566,513	295,846	320,251	6.5	7.1

Source: Totals of Other Tables.

[fol. 2599]

DEFENDANT'S EXHIBIT NO. CC

Replacement Battery Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
Total Replacement Manufactures(1)

California

Year	Total State	Retail Sales S. S. Inc.	Retail Sales Dealers	% of State Total S. S. Inc.	% of State Total Dealers
1933	718,108	17,670	58	2.5	....
1934	781,115	18,308	1,674	2.3	0.2
1935	801,286	19,957	3,336	2.5	0.4
1936	867,678	21,926	5,320	2.5	0.6
1937	897,892	25,660	7,676	2.9	0.9
1938	1,024,453	28,762	9,839	2.8	1.0
1939	1,143,043	31,720	11,985	2.8	1.0
1940	1,242,017	32,751	14,044	2.6	1.1
1941	1,372,907	38,474	17,020	2.8	1.2
1942	1,355,037	42,280	17,202	3.1	1.3
1943	1,533,310	32,505	19,526	2.1	1.3
1944	1,768,138	32,565	25,661	1.8	1.5
1945	1,636,592	33,310	23,307	2.0	1.4
1946	1,601,511	51,328	21,281	3.2	1.3

Sources: Association of American Battery Manufacturers, 1933-38; Dun & Bradstreet, Inc., 1939-46. Company Records.

(1) U. S. A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations." Batteries manufactured for export or original equipment are excluded.

[fol. 2600]

Replacement Battery Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
Total Replacement Manufactures(1)

Oregon

Year	Total State	Retail Sales S. S. Inc.	Retail Sales Dealers	% of State Total S. S. Inc.	% of State Total Dealers
1933	87,070	1,455	17	1.7	....
1934	106,472	1,703	284	1.6	0.3
1935	111,127	1,869	1,069	1.7	1.0
1936	124,702	2,045	1,762	1.6	1.4
1937	130,876	2,007	2,488	1.5	1.9
1938	146,522	2,372	3,389	1.6	2.3
1939	162,334	2,898	4,799	1.8	3.0
1940	176,407	2,950	5,034	1.7	2.9
1941	199,088	3,433	5,846	1.7	2.9
1942	194,445	3,967	6,572	2.0	3.4
1943	227,787	3,343	7,507	1.5	3.3
1944	259,964	3,456	7,623	1.3	2.9
1945	237,060	3,440	5,465	1.5	2.3
1946	238,299	4,376	5,083	1.8	2.1

Sources: Association of American Battery Manufacturers, 1933-38; Dun & Bradstreet, Inc., 1939-46. Company Records.

(1) U. S. A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations." Batteries manufactured for export or original equipment are excluded.

[fol. 2587]

DEFENDANTS' EXHIBIT No. AA

Automotive Lubricating Oil Sales

Retail Sales by Standard Stations, Inc. and Dealers

Versus

A.P.I. Estimated State Taxable Automotive Use

	A.P.I. Total Taxable Gallons	Retail Gallonage		% of A.P.I. Total Taxable	
		S.S. Inc.	Dealers	S.S. Inc.	Dealers
Oregon					
1936	5,060,540	125,927	527,016	2.5	10.4
1937	5,142,480	120,967	518,070	2.3	10.1
1938	5,062,020	130,618	428,022	2.6	8.4
1939	5,144,660	148,144	433,524	2.9	8.4
1940	5,533,920	159,793	552,090	2.9	10.0
1941	6,241,530	191,784	572,922	3.1	9.2
1942	5,594,184	182,179	420,546	3.3	7.5
1943	5,793,424	148,700	526,050	2.5	9.1
1944	6,318,647	146,323	415,170	2.3	6.6
1945	6,680,010	197,740	526,638	2.9	7.9
1946	8,337,367	344,945	817,950	4.1	9.8
Washington					
1936	7,882,760	175,875	748,986	2.2	9.5
1937	8,016,220	180,284	754,152	2.3	9.4
1938	7,787,720	191,032	717,990	2.5	9.2
1939	7,914,860	197,280	897,498	2.5	11.3
1940	8,374,790	212,210	711,858	2.5	8.5
1941	9,265,365	268,737	731,136	2.9	7.9
1942	8,897,148	263,125	557,466	2.9	6.3
1943	8,130,028	194,159	673,554	2.4	8.3
1944	9,270,483	165,340	535,584	1.8	5.8
1945	10,093,557	234,710	646,002	2.3	6.4
1946	12,318,272	439,219	984,816	3.6	8.0

Sources: American Petroleum Institute Tax Economics Bulletin.
Company Records.

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[fol. 2601]

Replacement Battery Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
Total Replacement Manufactures(1)

Washington

Year	Total State	Retail Sales S. S. Inc.	Retail Sales Dealers	% of State Total S. S. Inc.	% of State Total Dealers
1933	156,036	2,240	42	1.4	....
1934	165,515	2,436	487	1.5	0.3
1935	170,590	2,569	1,342	1.5	0.8
1936	185,482	2,499	2,396	1.3	1.3
1937	193,095	2,731	3,627	1.4	1.9
1938	212,577	3,076	4,828	1.4	2.3
1939	234,780	3,396	5,670	1.4	2.4
1940	252,419	3,773	6,574	1.5	2.6
1941	285,093	4,662	7,474	1.6	2.6
1942	287,110	5,744	7,074	2.0	2.5
1943	333,180	3,993	8,312	1.2	2.5
1944	384,212	3,366	8,965	0.9	2.3
1945	351,200	3,441	7,940	1.0	2.3
1946	332,918	6,042	7,366	1.8	2.2

Sources: Association of American Battery Manufacturers, 1933–38; Dun & Bradstreet, Inc., 1939–46. Company Records.

(1) U. S. A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations." Batteries manufactured for export or original equipment are excluded.

[fol. 2602]

Replacement Battery Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
Total Replacement Manufactures(1)

Arizona

Year	State Total	Retail Sales S. S. Inc.	Retail Sales Dealers	% of State Total S. S. Inc.	% of State Total Dealers
1933	32,759	806	33	2.5	0.1
1934	38,717	924	371	2.4	1.0
1935	38,992	1,246	674	3.2	1.7
1936	42,965	1,449	1,006	3.4	2.3
1937	46,128	1,744	1,016	3.8	2.2
1938	52,844	1,927	1,218	3.6	2.3
1939	57,689	2,195	1,656	3.8	2.9
1940	61,671	2,516	2,020	4.1	3.3
1941	66,893	2,921	2,109	4.4	3.2
1942	65,321	3,790	2,822	5.8	4.3
1943	76,496	3,761	3,530	4.9	4.6
1944	87,929	3,775	4,939	4.3	5.6
1945	82,532	3,120	4,208	3.8	5.1
1946	82,353	3,542	3,877	4.3	4.7

Sources: Association of American Battery Manufacturers, 1933–38; Dun and Bradstreet, Inc., 1939–46. Company Records.

(1) U. S. A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations." Batteries manufactured for export or original equipment are exeluded.

fol. 2603]

Replacement Battery Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
Total Replacement Manufactures(1)

Nevada

Year	State Total	Retail Sales S. S. Inc.	Retail Sales Dealers	% of State Total S. S. Inc.	% of State Total Dealers
1933	10,345	134	24	1.3	0.2
1934	12,583	165	281	1.3	2.2
1935	13,647	182	395	1.3	2.9
1936	14,671	199	623	1.4	4.3
1937	15,019	263	772	1.8	5.1
1938	15,613	371	1,083	2.4	6.9
1939	17,441	456	1,207	2.6	6.9
1940	20,079	434	1,348	2.2	6.7
1941	22,298	512	1,406	2.3	6.3
1942	22,787	1,362	1,624	6.0	7.1
1943	28,898	836	1,653	2.9	7.2
1944	30,584	864	1,664	2.8	5.4
1945	26,340	872	1,168	3.3	4.4
1946	26,283	1,459	1,120	5.6	4.3

Sources: Association of American Battery Manufacturers, 1933–38; Dun and Bradstreet, Inc., 1939–46. Company Records.

(1) U. S. A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations." Batteries manufactured for export or original equipment are excluded.

[fol. 2604]

Replacement Battery Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
Total Replacement Manufactures(1)

Idaho

Year	Total State	Retail Sales S. S. Inc.	Retail Sales Dealers	% of State Total S. S. Inc.	% of State Total Dealers
1933	35,345	68	....	0.2	....
1934	42,589	94	41	0.2	0.1
1935	44,841	104	344	0.2	0.8
1936	49,252	170	671	0.3	1.4
1937	51,492	263	1,349	0.5	2.6
1938	56,447	297	1,534	0.5	2.7
1939	67,080	414	1,852	0.6	2.8
1940	73,144	477	1,988	0.7	2.7
1941	79,635	563	2,035	0.7	2.6
1942	72,917	949	2,125	1.3	2.9
1943	83,295	696	2,189	0.8	2.6
1944	93,664	545	2,632	0.6	2.8
1945	86,044	596	2,429	0.7	2.8
1946	87,610	1,042	2,369	1.2	2.7

Sources: Association of American Battery Manufacturers, 1933–38; Dun and Bradstreet, Inc., 1939–46. Company Records.

(1) U. S. A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations." Batteries manufactured for export or original equipment are excluded.

[fol. 2588]

Automotive Lubricating Oil Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
A.P.I. Estimated State Taxable Automotive Use

	A.P.I. Total Taxable Gallons	Retail Gallonage		% of A.P.I. Total Taxable	
		S.S. Inc.	Dealers	S.S. Inc.	Dealers
Arizona					
1936	2,141,000	80,901	259,602	3.8	12.1
1937	2,268,740	85,612	265,776	3.8	11.7
1938	2,238,970	83,544	230,202	3.7	10.3
1939	2,275,520	93,021	306,138	4.1	13.4
1940	2,346,960	101,334	272,958	4.3	11.6
1941	2,651,930	118,183	282,660	4.4	10.7
1942	2,595,312	119,681	191,940	4.6	7.4
1943	3,007,057	110,496	216,384	3.7	7.2
1944	3,538,948	119,270	184,422	3.4	5.2
1945	3,235,821	167,229	252,252	5.2	7.8
1946	3,980,905	245,119	372,582	6.2	9.4
Nevada					
1936	778,540	23,732	148,596	3.0	19.1
1937	806,660	23,891	157,164	2.9	19.5
1938	778,770	25,803	148,344	3.3	19.1
1939	791,490	31,361	190,638	2.9	24.1
1940	908,150	30,311	128,856	3.3	14.2
1941	1,025,277	41,573	131,208	4.1	12.8
1942	1,029,546	50,331	95,256	4.9	9.3
1943	952,261	32,024	118,146	3.8	13.8
1944	1,083,342	29,412	97,062	2.7	9.0
1945	1,256,332	43,240	121,002	3.5	9.6
1946	1,577,340	75,424	186,900	4.8	11.8

Sources: American Petroleum Institute Tax Economics Bulletin.
Company Records.

[fol. 2589]

Automotive Lubricating Oil Sales

Retail Sales by Standard Stations, Inc. and Dealers

Versus

A.P.I. Estimated State Taxable Automotive Use

	A.P.I. Total Taxable Gallons	Retail Gallonage		% of A.P.I. Total Taxable	
		S.S. Inc.	Dealers	S.S. Inc.	Dealers
Idaho					
1936	2,043,680	14,392	212,688	0.7	10.4
1937	2,117,490	20,358	210,546	1.0	9.9
1938	2,092,950	21,789	198,156	1.0	9.5
1939	2,127,120	26,350	255,528	1.3	12.0
1940	2,288,560	30,742	221,508	1.3	9.7
1941	2,467,109	36,664	227,388	1.5	9.2
1942	2,087,865	38,492	164,598	1.8	7.9
1943	2,284,725	30,232	213,906	1.3	9.4
1944	2,378,816	25,554	181,398	1.1	7.6
1945	2,690,389	34,216	209,160	1.3	7.7
1946	3,304,902	53,427	328,860	1.6	10.0
Utah					
1936	1,897,700	14,862	162,750	0.8	8.6
1937	1,966,240	18,757	184,590	0.9	9.4
1938	2,141,620	19,130	207,774	0.9	9.7
1939	2,176,590	21,493	294,294	1.0	13.5
1940	2,375,570	27,598	224,784	1.2	9.4
1941	2,581,280	39,619	230,790	1.5	9.0
1942	2,265,444	53,107	173,250	2.3	7.7
1943	2,059,860	53,804	244,902	2.6	11.9
1944	2,584,036	42,511	204,078	1.6	7.9
1945	2,923,270	55,559	247,338	1.9	8.5
1946	3,605,348	97,297	313,698	2.7	8.7

Sources: American Petroleum Institute Tax Economics Bulletin.
Company Reports.

[fol. 2590]

Automotive Lubricating Oil Sales

Retail Sales by Standard Stations, Inc. and Dealers

Versus

A.P.I. Estimated State Taxable Automotive Use

	A.P.I. Total Taxable Gallons	Retail Gallonage S.S. Inc.	Retail Gallonage Dealers	% of A.P.I. Total Taxable S.S. Inc.	% of A.P.I. Total Taxable Dealers
Seven Western States					
1936	59,704,600	1,757,020	3,724,476	3.0	6.2
1937	61,256,030	1,880,747	3,756,504	3.1	6.1
1938	59,430,040	1,954,739	3,557,862	3.3	6.0
1939	60,400,280	2,091,319	3,955,476	3.5	6.5
1940	61,167,126	2,159,619	4,117,134	3.5	6.8
1941	70,098,109	2,588,527	4,218,816	3.7	6.0
1942	72,035,712	2,518,428	3,594,234	3.5	5.0
1943	69,390,941	1,927,941	4,074,672	2.8	5.9
1944	78,920,867	1,846,825	3,334,842	2.4	4.2
1945	99,684,517	2,664,262	4,101,552	2.6	4.1
1946	122,281,383	4,618,119	6,067,782	3.8	5.0
1947	n.a.	4,484,054	6,268,206		
California					
1936	39,900,380	1,321,331	1,664,838	3.3	4.2
1937	40,938,200	1,430,878	1,669,206	3.5	4.1
1938	39,327,990	1,482,823	1,627,374	3.8	4.1
1939	39,970,040	1,573,670	1,577,856	3.9	4.0
1940	41,451,440	1,597,631	2,005,080	3.9	4.8
1941	45,865,618	1,891,967	2,042,712	4.1	4.5
1942	49,566,213	1,811,513	1,991,178	3.7	4.0
1943	47,263,591	1,358,526	2,081,730	2.9	4.4
1944	53,746,595	1,318,415	1,717,128	2.4	3.2
1945	72,805,138	1,931,568	2,099,160	2.6	2.9
1946	89,157,249	3,362,688	3,062,976	3.8	3.4

Sources: American Petroleum Institute Tax Economics Bulletin.
Company Records.

[fol. 2591]

DEFENDANTS' EXHIBIT No. BB

The Replacement Shipments (1)

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Totals

California

Year	State Total	Retail Sales S.S. Inc.	Retail Sales Dealers	% of State Totals S.S. Inc.	% of State Totals Dealers
1933	2,706,750	94,366	3,441	3.5	.1
1934	2,604,673	104,740	7,199	4.0	.3
1935	2,417,173	92,879	15,645	3.8	.6
1936	2,555,788	97,465	23,988	3.8	.9
1937	2,501,485	88,820	31,714	3.6	1.3
1938	2,607,385	96,727	35,654	3.7	1.4
1939	3,239,477	106,253	38,602	3.3	1.2
1940	3,060,934	107,582	40,571	3.5	1.3
1941	3,438,898	107,870	41,038	3.1	1.2
1942	791,371	5,895	4,954	.7	.6
1943	1,672,909	44,710	25,622	2.7	1.5
1944	2,445,596	35,658	30,221	1.5	1.5
1945	3,399,788	53,547	35,815	1.6	1.6
1946	5,985,786	130,079	79,502	2.2	1.3

Source: Rubber Manufacturer's Association, Company Records.
(1) Excludes Exports and original equipment. U.S.A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations."

[fol. 2592]

Tire Replacement Shipments (1)

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Totals

Oregon

Year	State Total	Retail Sales S.S. Inc.	Retail Sales Dealers	% of State Totals S.S. Inc.	% of State Totals Dealers
1933	328,189	14,426	1,041	4.4	.3
1934	355,036	16,158	1,236	4.6	.3
1935	335,228	12,274	5,013	3.7	1.5
1936	367,317	13,120	7,942	3.6	2.2
1937	364,613	11,596	13,546	3.2	3.7
1938	372,920	13,588	15,218	3.6	4.1
1939	460,067	14,402	17,485	3.1	3.8
1940	434,759	15,195	16,479	3.5	3.8
1941	498,680	14,485	15,748	2.9	3.2
1942	113,560	1,372	2,936	1.2	2.6
1943	248,525	6,560	10,873	2.6	4.4
1944	359,569	5,359	10,509	1.5	2.9
1945	492,459	6,723	12,042	1.4	2.4
1946	890,664	13,237	29,073	1.5	3.4

Source: Rubber Manufacturer's Association, Company Records.
(1) Excludes Exports and Original Equipment. U.S.A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations."

[fol. 2593]

Tire Replacement Shipments (1)

Retail Sales by Standard Stations, Inc. and Dealers

Versus

State Totals

Washington

Year	State Total	Retail Sales S.S. Inc.	Retail Sales Dealers	% of State Totals S.S. Inc.	% of State Totals Dealers
1933	588,141	15,750	2,557	2.7	.4
1934	551,920	16,433	2,119	3.0	.4
1935	514,605	12,401	6,292	2.4	1.2
1936	546,346	12,317	10,805	2.3	2.0
1937	537,954	10,732	14,025	2.0	2.6
1938	541,040	11,570	16,190	2.1	3.0
1939	665,386	11,756	16,339	1.8	2.5
1940	622,084	12,308	16,865	2.0	2.7
1941	714,401	13,407	17,083	1.9	2.4
1942	167,678	852	1,914	.5	1.1
1943	363,515	4,395	8,560	1.2	2.4
1944	531,421	4,192	9,595	.8	1.8
1945	729,568	6,328	11,731	.9	1.6
1946	1,244,310	14,296	30,688	1.1	2.5

Source: Rubber Manufacturer's Association, Company Records.

(1) Excludes Exports and Original Equipment. U.S.A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations."

[fol. 2594]

Tire Replacement Shipments (1)

Retail Sales by Standard Stations, Inc. and Dealers

Versus

State Totals

Arizona

Year	State Total	Retail Sales S.S. Inc.	Retail Sales Dealers	% of State Totals S.S. Inc.	% of State Totals Dealers
1933	123,477	6,220	4,538	5.0	3.7
1934	129,104	7,345	3,163	5.7	2.4
1935	117,624	6,706	1,616	5.7	1.4
1936	126,555	7,631	2,010	6.0	1.6
1937	128,511	8,141	8,048	6.3	6.3
1938	134,496	8,072	7,432	6.0	5.5
1939	163,495	9,405	8,026	5.8	4.9
1940	151,986	10,484	7,420	6.9	4.9
1941	167,557	10,633	6,872	6.4	4.1
1942	38,149	558	1,022	1.5	2.7
1943	83,460	3,503	4,512	4.2	5.4
1944	121,619	4,457	6,201	3.7	5.1
1945	171,449	7,751	7,847	4.5	4.6
1946	307,803	10,060	16,152	3.3	5.2

Source: Rubber Manufacturer's Association, Company Records.

(1) Excludes Exports and Original Equipment. U.S.A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations."

[fol. 2605]

Replacement Battery Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
Total Replacement Manufactures(1)

Utah

Year	State Total	Retail Sales S. S. Inc.	Retail Sales Dealers	% of State Total S. S. Inc.	% of State Total Dealers
1933	36,207	22	.....	0.1	....
1934	39,685	24	3	0.1	....
1935	38,992	26	14	0.1	....
1936	42,965	114	204	0.3	0.5
1937	46,128	230	596	0.5	1.3
1938	51,643	259	722	0.5	1.4
1939	57,689	331	898	0.6	1.6
1940	63,105	478	1,058	0.8	1.7
1941	70,079	666	1,110	1.0	1.6
1942	71,398	1,125	1,237	1.6	1.7
1943	88,395	1,302	1,966	1.5	2.2
1944	97,486	912	2,201	0.9	2.3
1945	87,800	1,100	2,195	1.3	2.5
1946	87,610	1,667	1,982	1.9	2.3

Sources: Association of American Battery Manufacturers, 1933–38; Dun and Bradstreet, Inc., 1939–46. Company Records.

(1) U. S. A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations." Batteries manufactured for export or original equipment are excluded.

[fol. 2606]

Replacement Battery Sales

Retail Sales by Standard Stations, Inc. and Dealers
Versus
Total Replacement Manufactures(1)

Seven Western States

Year	Total State	Retail Sales S. S. Inc.	Retail Sales Dealers	% of State Total S. S. Inc.	% of State Total Dealers
1933	1,075,870	22,395	174	2.1	....
1934	1,186,676	23,654	3,121	2.0	0.3
1935	1,219,475	25,953	7,174	2.1	0.6
1936	1,327,715	28,402	11,982	2.1	0.9
1937	1,380,630	32,898	17,524	2.4	1.3
1938	1,560,099	37,064	22,563	2.4	1.4
1939	1,740,056	41,410	28,067	2.4	1.6
1940	1,888,842	43,379	32,066	2.3	1.7
1941	2,095,993	51,231	37,000	2.5	1.8
1942	2,069,015	59,217	38,656	2.9	1.9
1943	2,371,361	46,436	44,683	2.0	1.9
1944	2,721,977	45,483	53,685	1.7	2.0
1945	2,507,568	45,879	46,708	1.8	1.9
1946	2,456,584	69,456	43,078	2.8	1.8
1947	3,485,053	76,583	63,126	2.2	1.8

Sources: Association of American Battery Manufacturers, 1933-38; Dun & Bradstreet, Inc., 1939–46. Company Records.

(1) U. S. A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations." Batteries manufactured for export or original equipment are excluded.

[fol. 2595]

Tire Replacement Shipments (1)

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Totals

Nevada

Year	State Total	Retail Sales S.S. Inc.	Retail Sales Dealers	% of State Totals S.S. Inc.	% of State Totals Dealers
1933	38,993	1,059	1,442	2.7	3.7
1934	41,959	1,322	1,222	3.2	2.9
1935	41,168	1,265	1,851	3.1	4.5
1936	43,214	1,473	2,809	3.4	6.5
1937	41,841	1,232	4,542	2.9	10.9
1938	39,737	1,615	5,308	4.1	13.4
1939	49,429	1,764	5,255	3.6	10.6
1940	49,484	2,127	5,590	4.3	11.3
1941	55,852	2,465	5,154	4.4	9.2
1942	13,308	123	813	.9	6.1
1943	31,529	1,592	2,429	5.0	7.7
1944	42,302	1,220	1,632	2.9	3.9
1945	54,718	1,582	1,631	2.9	3.0
1946	98,235	3,000	4,307	3.1	4.4

Source: Rubber Manufacturer's Association, Company Records.
(1) Excludes Exports and Original Equipment. U.S.A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations."

[fol. 2596]

Tire Replacement Shipments (1)

Retail Sales by Standard Stations, Inc. and Dealers
Versus
State Totals

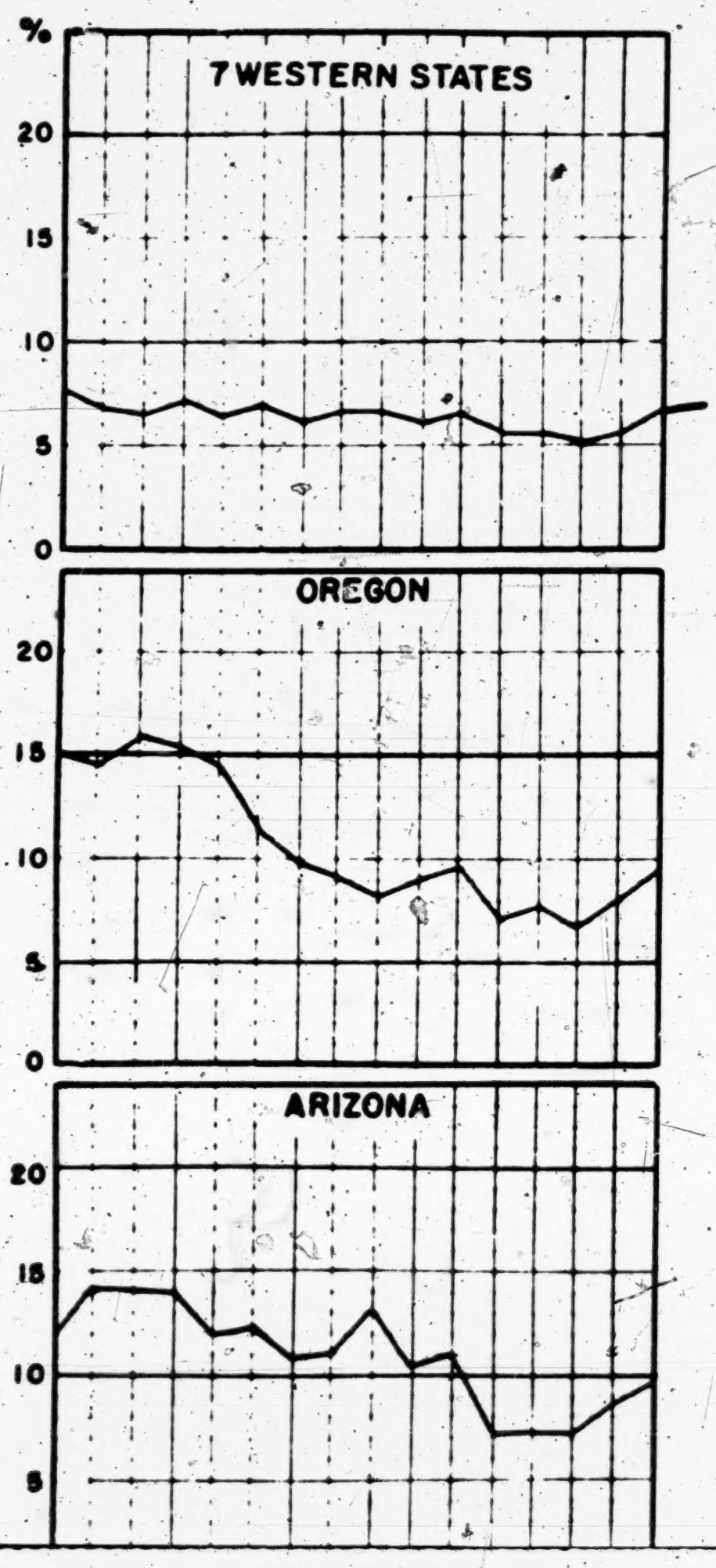
Idaho

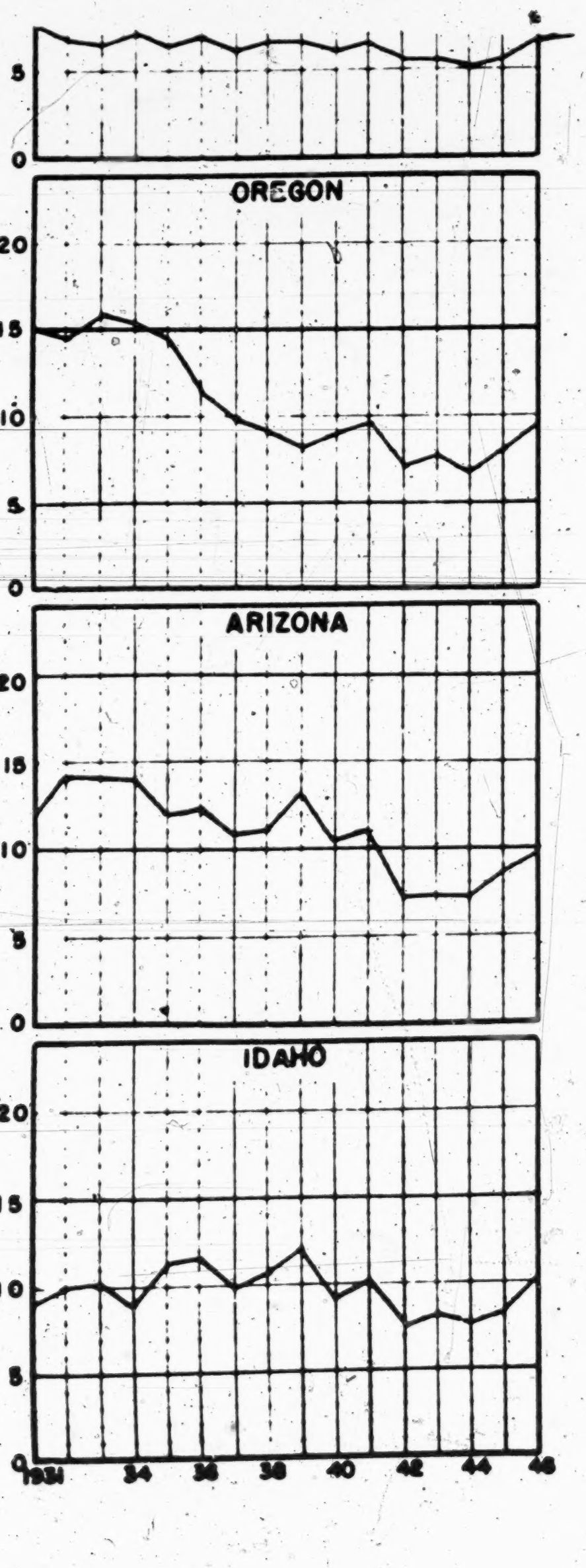
Year	State Total	Retail Sales S.S. Inc.	Retail Sales Dealers	% of State Total S.S. Inc.	% of State Total Dealers
1933	133,225	397	11	.3	.0
1934	142,014	588	177	.4	.1
1935	135,268	633	1,615	.5	1.2
1936	145,075	1,072	3,025	.7	2.1
1937	143,445	1,360	5,339	1.0	3.7
1938	143,668	1,614	5,662	1.1	3.9
1939	190,110	1,764	6,402	.9	3.4
1940	180,263	2,125	5,879	1.2	3.3
1941	199,472	2,621	5,535	1.3	2.8
1942	42,585	341	800	.8	1.9
1943	90,879	1,019	2,603	1.1	2.9
1944	129,550	637	3,264	.5	2.5
1945	178,744	1,107	4,273	.6	2.4
1946	327,450	2,294	9,511	.7	2.9

Source: Rubber Manufacturer's Association, Company Records.
(1) Excludes Exports and Original Equipment. U.S.A. total apportioned by states on basis of U. S. Public Roads Administration's "Motor Vehicle Registrations."

DEFENDANTS EXHIBIT NO. DD

RETAIL SALES BY STANDARD'S DEALERS
AS % OF STATE TAXABLE MOTOR FUEL SALES

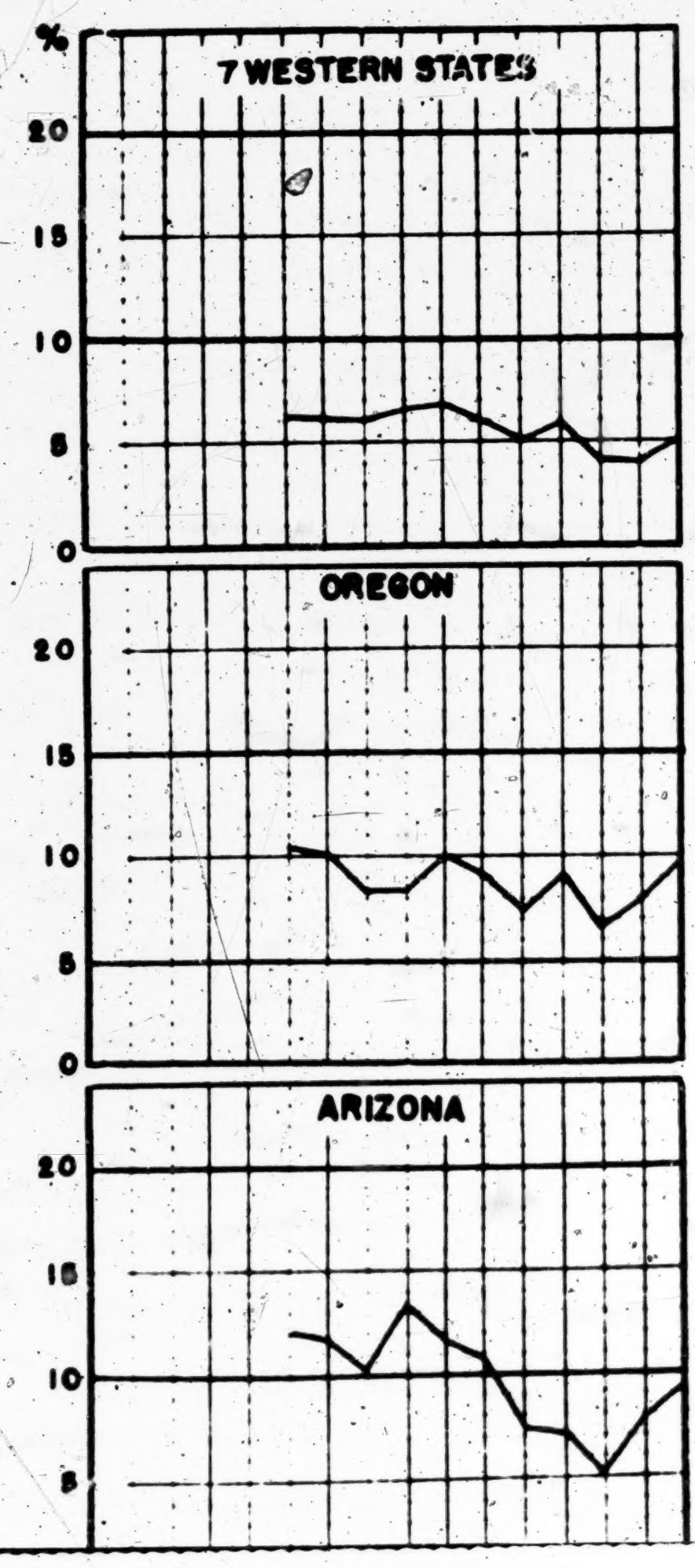




DEFENDANTS EXHIBIT NO. EE

AUTO. LUBR. OILS

RETAIL SALES BY STANDARD'S DEALERS
AS % OF API'S ESTIMATED USE OF AUTOMOTIVE LUBRICATING OILS



It was further stipulated that all objections to questions propounded to the said witnesses shall be reserved by each of the parties, save and except any objections as to the form of the questions propounded.

It was further stipulated that if the witnesses should be instructed not to answer questions propounded by counsel, in the absence of the Notary Public, it shall be deemed that the Notary Public has so instructed the witnesses to answer, but that the witnesses still refuse to answer.

[fol. 2621] FRANCIS S. OLAINE, a witness called on behalf of the plaintiffs, being first duly cautioned and sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

Mr. Thrody:

Q. Will you state your name?
A. Francis S. Olaine.
Q. Your address?
A. 225 Bush Street, San Francisco.
Q. Your present position?
A. Analyst, Distribution Department.
Q. What is the nature of your duties in connection with that position?
A. Well, the basic function of the Distribution Department is to arrange for the distribution of Petroleum products to points where they are required and when they are required and at the lowest practicable distribution costs.
Q. How long have you held that position?
A. Six years in the analyst capacity, and——
Q. Have you served in other capacities previously?
A. Yes. In distribution work I have been with the Company twenty-five years.
Q. You are acquainted, of course, with the distribution system of Standard Oil in the states generally known as the Western Area? I refer to the states of California, Oregon, Washington, Idaho, Utah, Nevada, and Arizona, and also New Mexico.

[fol. 2622] Mr. Hall: Well, pardon me a minute, Mr. Thrody. As disclosed by our Answer in this case, the

Standard Oil Company of California does not distribute in the State of New Mexico and has no dealers in the State of New Mexico. So, I think that is out. I am sure it is out as far as this witness is concerned.

Mr. Thrody:

Q. With the exception of the State of New Mexico then, you are acquainted with the distribution setup of Standard?

A. Yes, sir.

Q. In these other states I have mentioned?

A. Yes, sir.

Q. Where are the various refineries located?

A. There are three of them in California: at Richmond, at Bakersfield, and at El Segundo.

Q. Do these refineries provide the source of gasoline for those States referred to in the Western Area, with the exception of New Mexico?

A. Not entirely. We also obtain gasoline from a refinery at Salt Lake City and from a refinery at El Paso, Texas.

Q. The crude oil which is used in the three refineries you have referred to, which are owned by Standard, could you tell us where said crude originates from with respect to each of those?

A. No. I am not qualified to answer that question.

Q. Well, I understand your knowledge begins after the refinery?

A. Yes. Generally speaking, when the products are in finished form and in distribution for our bulk plants.

[fol. 2623] Q. Now, in the marketing area that is referred to in these seven states is there any general pattern of distribution which is followed—do you have certain distribution areas?

A. Yes. As indicated on the map, we have approximately twenty-four.

Q. Twenty-four?

A. Twenty-three that are numbered, and there are two carrying the same number because they are from the same source.

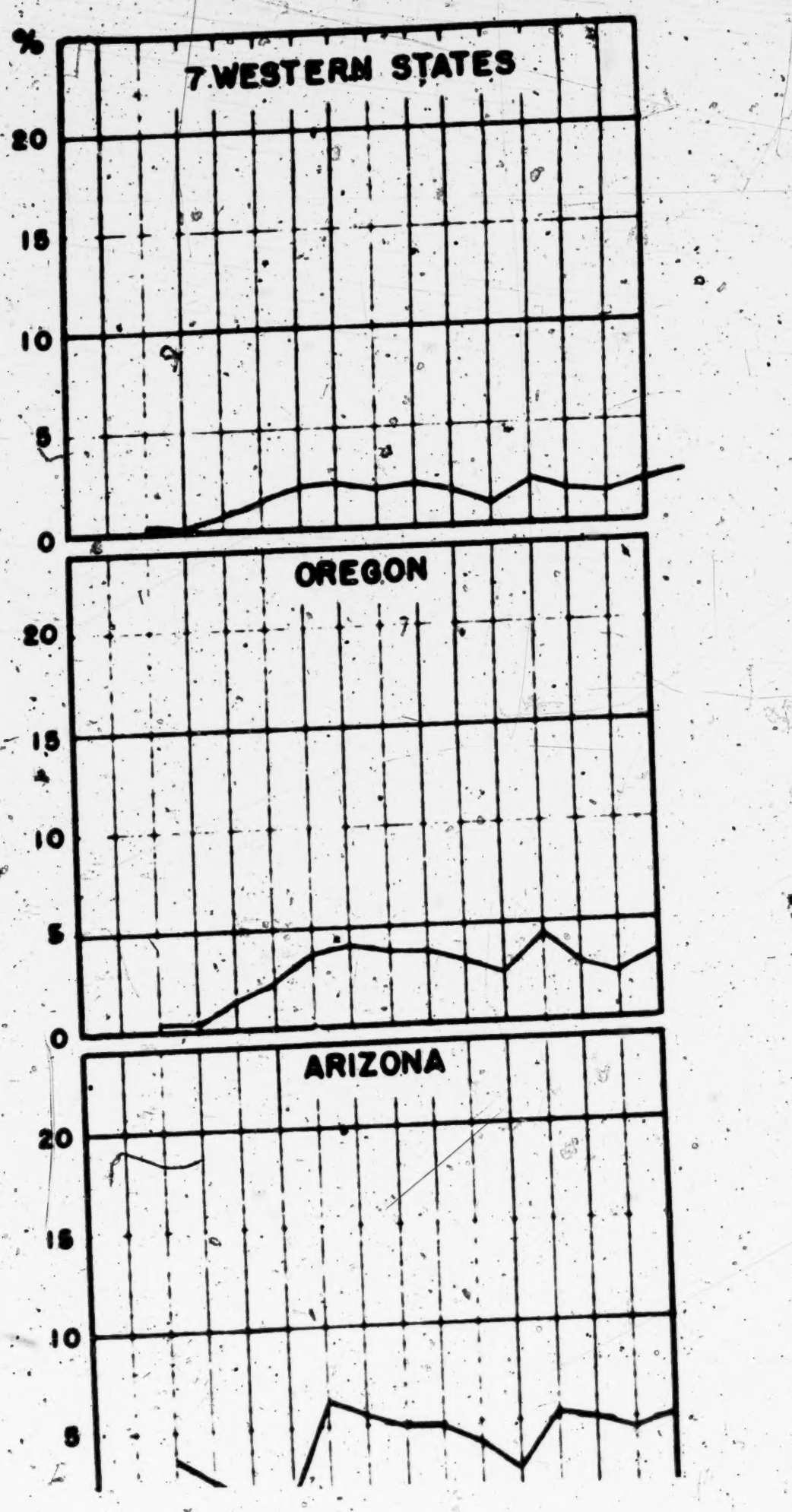
Q. I think you better refer to the map. Will the Reporter mark this map for identification?

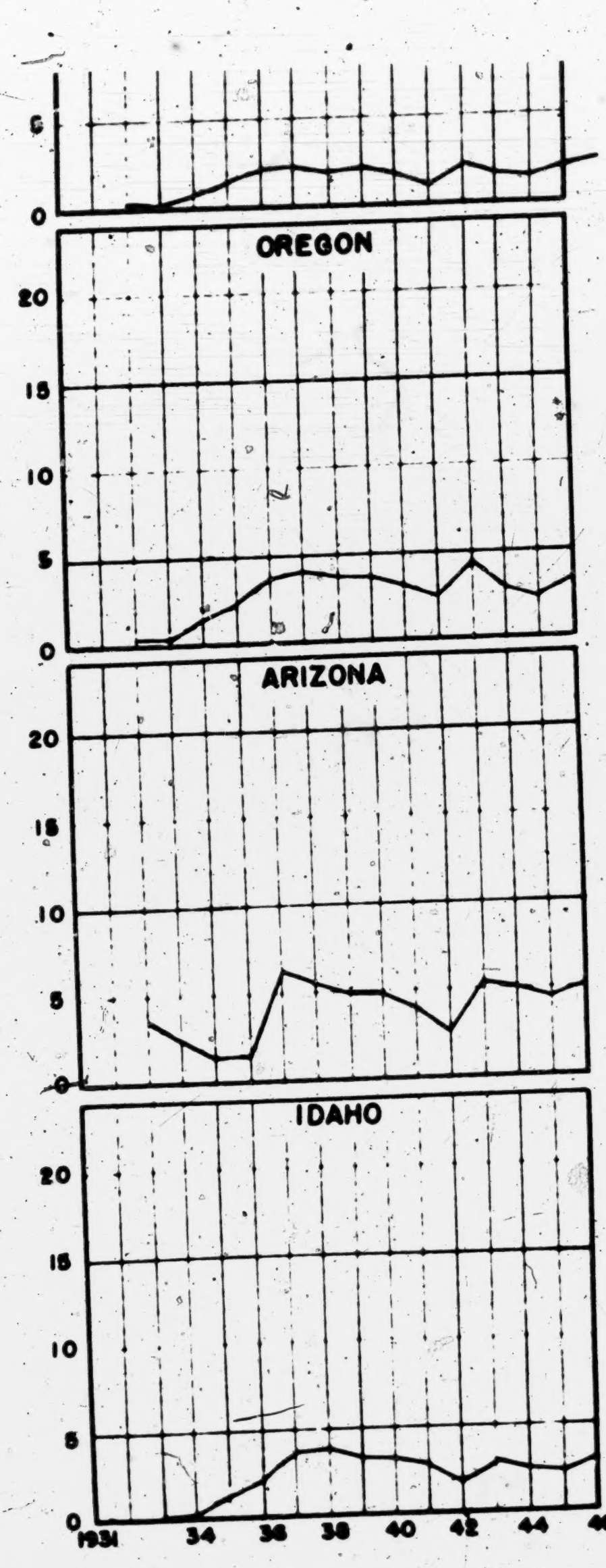
(The said map was marked "Plaintiff's Exhibit A for Identification.)

DEFENDANTS EXHIBIT NO. FF

TIRES

RETAIL SALES BY STANDARD'S DEALERS
AS % OF ESTIMATED STATE TOTAL TIRE REPLACEMENT SHIPMENTS
BASED UPON RUBBER MANUFACTURERS ASSOCIATION'S DATA





2609

DEFENDANTS EXHIBIT NO. GG

BATTERIES

RETAIL SALES BY STANDARD'S DEALERS AS % OF ESTIMATED STATE TOTAL BATTERY REPLACEMENTS

BASED UPON DATA FROM ASSN. OF AMER. BATTERY MFGRS., DUN & BRADSTREET, INC.

Q. Could you tell us who prepared this map (referring to Exhibit A.)?

A. I prepared it.

Q. And it does represent the various distributing areas of the seven western states?

A. Yes, sir.

Q. Could you indicate to us the distributive areas?

A. There are twenty-three marked——.

Q. You said there are twenty-four.

A. The reason for the twenty-four is that these two areas here (indicating) are supplied direct from Richmond by tank car and truck, and we use the same number because——

Mr. Hall: The witness has just been referring on Exhibit A for Identification to the areas which are marked "2".

Mr. Thrody: That is correct.

[fol. 2624] Q. Could you indicate to us, Mr. Olane, the distributive areas that are supplied by your Richmond refinery?

A. Well, I can. I will refer to them by the source of their supply. For instance, this area here as indicated on these accompanying sheets here (indicating).

Q. I think for the record it might be better to refer to the number.

A. Distributive Area No. 11 is supplied from terminals at Sacramento, Napa and San Rafael.

Q. Now, each of these terminals you refer to in Distributive Area No. 11 receive their gasoline from the refinery——

A. By barge.

Q. —by barge?

A. Each of these three marine terminals, and they in turn redistribute by tank car and by tank truck into the area marked No. 11.

Mr. Hall: I think you can shorten this a great deal, Mr. Thrody, if I may make a suggestion.

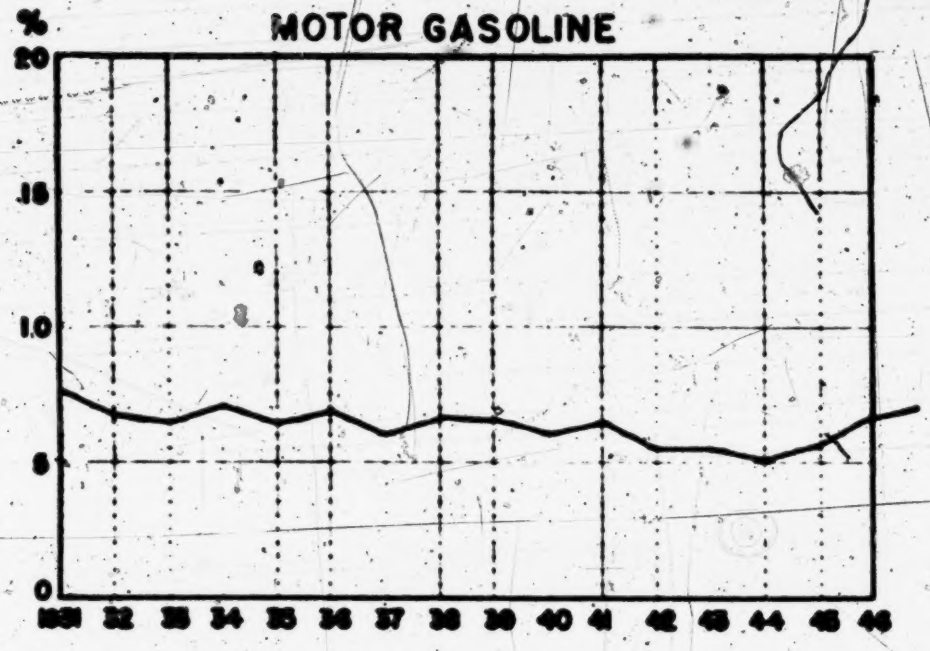
Mr. Thrody: Please do so.

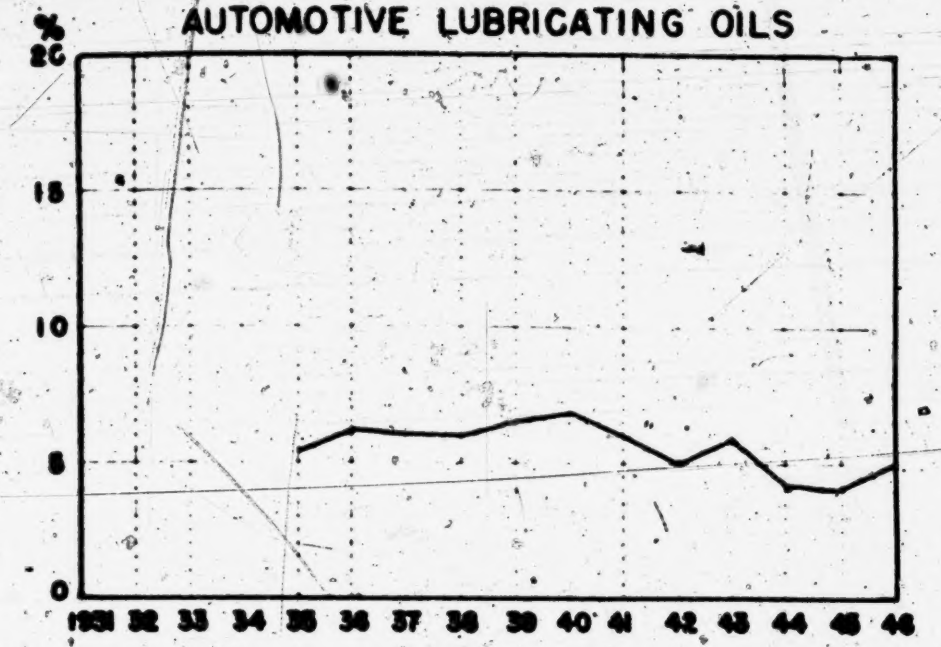
Mr. Hall: By reference to the explanatory sheets that the witness has provided which with respect to each of the numbered districts shows the point from which the products originate and how they pass to the bulk plants.

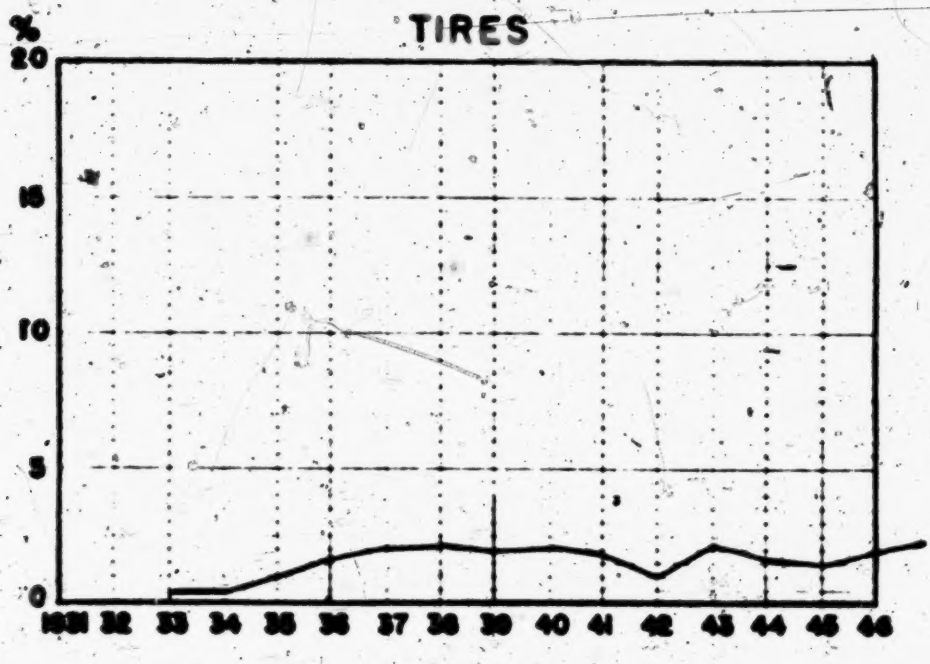
Mr. Thrody: Yes. I see. With respect to No. 11, that is precisely the information we developed.

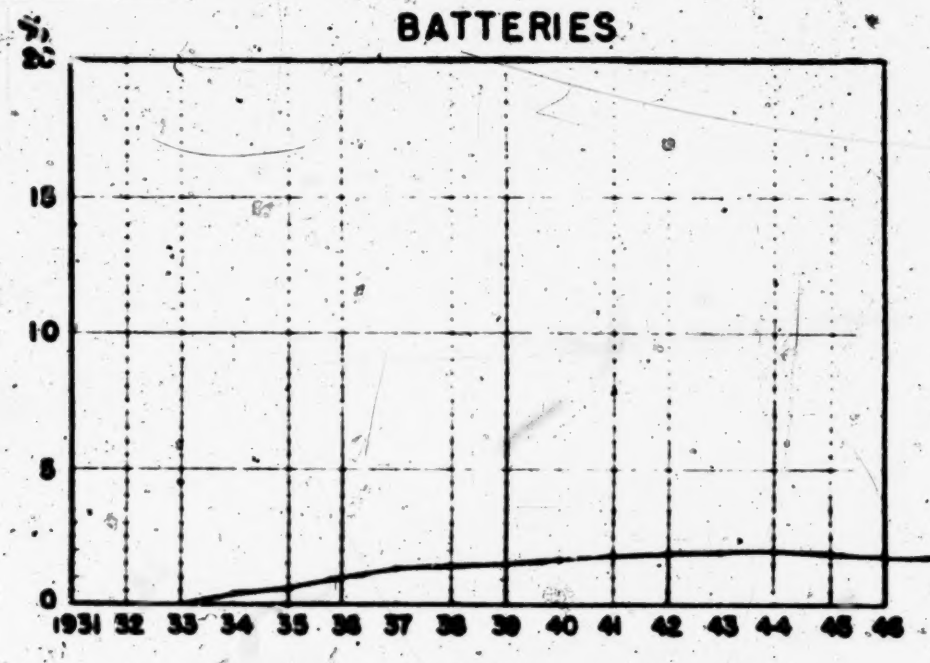
Q. All right. Can you generalize with the statement you have before you, Mr. Olane, on the distribution outlets of

RETAIL SALES BY STANDARD'S DEALERS AS PERCENTS OF ESTIMATED STATE TOTALS (SEVEN WESTERN STATES)









DEFENDANTS EXHIBIT NO. HH

these various distributive areas; is there any common uni-
[fol. 2625] form pattern as far as the general procedure of distribution in each distributive area, or are the problems of distribution peculiar to each area?

A. ——

Mr. Hall: Now, that isn't clear to me, that question, Mr. Thrody. I will interpose an objection to the form of the question.

Mr. Thrody: I will withdraw the question.

Mr. Hall: Off the record.

(Discussion off the record.)

Mr. Thrody:

Q. Mr. Olane, with respect to Distributive Areas Nos. 1, 2, 3 and 4, you have indicated they are supplied from the Richmond refinery, is that correct?

A. 1 and 2 are the Richmond refinery,——

Q. Oh.

A. —and 3 is the Bakersfield refinery; and 4 is the El Segundo refinery.

Q. And in those cases do I understand the supply is directly from the refinery itself?

A. Yes, sir.

Q. Now, the means of transporting from the refinery, in the instance of Area No. 1, you have indicated by barge, tank cars and/or tank trucks?

A. Yes, sir.

Q. Who owns those tank cars and those barges and tank trucks for Area No. 1, or for all distribution from the refineries?

A. We do not, as I understand it, own the tank cars. They are a lease arrangement with which I am not entirely familiar.

Q. You have them under lease from the——

[fol. 2626] A. From the tank car company.

Q. But they are under your direction and control?

A. Yes, sir.

Q. You dispatch those cars and so on?

A. Yes, sir.

Q. How is the gasoline, and so, distributed from the refineries picked up at the—is there some section, some particular division of the refinery that dispenses the gasoline?

A. Well, in each case the—there are loading racks for the tank cars and loading racks for the tank trucks, and, of course, the barges at Richmond are loaded over the wharf.

Q. Now, are these tank cars and these tank trucks—are they manned by personnel of Standard?

A. Well, in speaking of tank cars manned, how is the term used?

Q. By the personnel.

A. We simply load the tank cars—our personnel load them, and also the tank trucks and also the barges.

Q. The tank cars, and they are handled by the railroad, they also like any other shipment of goods?

A. That is right.

Q. And the tank trucks, do you have your own fleet of tank trucks?

A. We hire commercial tank trucks, and we also have our own motor tank trucks.

Q. At all times though the tank trucks are under your jurisdiction and control—you dispatch them and you know at the time the approximate time of departure and the approximate time of arrival?

A. Yes, sir.

[fol. 2627] Q. They leave the loading tank rack, and they are conveyed where in each area? You say in connection with the group here, No. 1——

Mr. Hall: If you are going to use that, hadn't it be marked as an exhibit—marked Exhibit A-1 for Identification?

Mr. Thrody: Yes. Will you mark this?

(The document entitled "Bulk Distribution—Map Exhibit 'A' " was marked "Plaintiff's Exhibit A-1 for Identification" and is attached hereto.)

Q. After they leave the loading rack of the refineries, they are conveyed by these various methods to what points—what will *be* the ultimate destination in these areas be? First, destination from the refinery, and then the ultimate destination.

Mr. Hall: Just a minute. What do you mean by "they"?

Mr. Thrody: I am referring to the tank cars and tank trucks. They are dispatched from the refinery to—where would they go in these various areas?

[fol. 2612]

DEFENDANTS' EXHIBIT No. II

Companies Marketing Over 1,000,000 Taxable Gallons of Gasoline in Seven Western States, 1946

N.B. This list excludes companies whose gasoline for distribution is purchased tax-paid.

	States in Which Company Markets Gasoline						
	Cal.	Wash.	Ore.	Ariz.	Nev.	Ida.	Utah
Arizona Oil Company				x			
Associated Oil and Gas							x
Bell Oil and Refining	x						
Ben Hur Refining Corporation	x						
Blue Bell Company						x	
Celstate Refining Company	x						
Camas Oil Company		x				x	
Caminol Company	x						
Cardinal, Joe					x		
Carter Oil Company		x				x	
Century Oil Company	x						
Chief Petroleum Company, Inc.		x				x	
Christopher, Roscoe				x			
Clack Company, H. Earl		x	x			x	
Coline Gasoline Corporation	x						
Continental Oil Company	x					x	x
Cooperative Oil Association			x			x	
Covey Garage, Inc.							x
Consumers' Transportation	x						
Del Valle Gasoline Company	x						
Eagle Oil & Refining Company, Inc.	x						
Exeter Refining Company	x						
Farmers Oil Company						x	
Five C Refining Company	x						
Fletcher Oil Company	x	x	x			x	
Gardner Oil Company		x					
General Petroleum Corporation	x	x	x	x	x	x	x
Goodman Oil Company		x	x			x	
Hancock Oil Company of California	x						

[fol. 2613]

Idaho Refining Company							x
Inland Gas Company							x
Kreiger Oil Company	x						
MacMillan Petroleum Corporation	x						
Magruder, P. S.	x						
McCoard, Harry							x
McNutt Oil & Refining				x			
Mohawk Petroleum Corporation	x						
Northwest Oil Company		x	x			x	
Norwalk Company	x						
Newhall Refining	x						
Operators Oil & Refining, Henry Brown	x						
Pacific Supply Cooperative		x	x			x	
Petrol Corporation	x						
Petrolene, Ltd.	x						
R. and V. Oil Company						x	

A. They will go to the bulk plants as marked on the map, those individual small dots—to our individual small stations.

Mr. Hall: So as to avoid confusion, you are, of course, referring to the districts which have been marked on Exhibit A for Identification as 1, 2, 3, 4, is that right?

Mr. Thrody: Yes. They go from——

Mr. Hall: Off the record.

(Discussion off the record.)

Mr. Thrody: Exhibit A-1 for Identification, can you tell [fol. 2628] me under whose—who prepared it?

A. I prepared this exhibit.

Q. In your official capacity as Analyst under the——

A. Distribution Department.

Q. Distribution Department?

A. Yes, sir.

Q. Will you address yourself, Mr. Olane, to the first group of distributive areas, Nos. 1, 2, 3 and 4, again, and tell us the steps in the distribution of gasoline from the refineries to the ultimate service stations in those particular areas? Now, you indicate here that the gasoline leaves the refinery by tank cars. Can you trace it through the various steps from the refinery to the service stations?

A. Well, I can only trace it as far as the bulk plants as indicated on this explanation here (Referring to Exhibit A-1).

Q. After the tank trucks and tank cars referred to there—after they leave the refinery, they place the gasoline in bulk——

A. Plants.

Q. —plants?

A. Yes, sir.

Q. Are these bulk plants owned by Standard Oil?

A. Well, I don't know that I am qualified technically to answer that question. We speak of all of these points shown as our bulk plants, but whether they are actually owned, I don't know that I am qualified to——

Mr. Hall: They all belong to Standard Oil Company of California, if you want that stipulation.

Mr. Thrody: Fine.

DEFENDANTS' EXHIBIT No. II

Companies Marketing Over 1,000,000 Taxable Gallons of Gasoline in Seven Western States, 1946

N.B. This list excludes companies whose gasoline for distribution is purchased tax-paid.

	States in Which Company Markets Gasoline						
	Cal.	Wash.	Ore.	Ariz.	Nev.	Ida.	Utah
Richfield Oil Corporation	x	x	x	x	x	x	...
Rothschild Oil Company	x	..	..	..	..	..	..
Sahuaro Petroleum Products Company	..	..	..	x	..	..	..
Seaside Oil Company	x	..	..	x	..	..	..
Shell Oil Company, Inc.	x	x	x	x	x	x	x
Signal Oil Company	x	x	x	x	x	..	..
Signal Oil and Gas Company	x	..	..	..	..	..	..
Sinclair Refining Company	..	..	..	x	..	x	x
Socal Oil and Refining Company	x	..	..	..	..	..	..
Southwest Co-op Wholesale	..	..	..	x	..	..	..
Standard Oil Company of California	x	x	x	x	x	x	x
Sunland Refining Corporation	x	..	..	..	..	..	..
Sunray Oil Corporation	x	..	..	..	..	..	..
Sunset Oil Company	x	x	x	..	..	..	..
Superior Oil Company	x	..	..	..	..	..	..
Texas Company, The	x	x	x	x	x	x	x
[fol. 2614]							
Texas Independent Oil Company	..	..	..	x	..	..	..
Sunset Oil and Gas Company	x	x	..	..	..	..	..
Tide Water Associated Oil Company	x	x	x	x	x	x	..
Time Oil Company	x	x	x	x	..	..	..
True's Oil Company	..	x	x	..	..	x	..
Uinta Oil Refining Company	..	..	..	..	..	..	x
Union Oil Company of California	x	x	x	x	x	x	x
United Oil of Idaho	..	..	..	..	..	x	..
Utah Co'op. Association	..	..	..	..	..	..	x
Utah Oil Refining Company	..	..	..	x	..	x	x
Washington Egg and Poultry	..	x	..	..	..	..	..
Wasatch Dixie Oil Company	..	..	..	..	x	..	x
Wasatch Oil Refining Company	x	..	..	..	x	..	x
Wescott Oil Company	..	..	x	..	..	x	..
Western Gulf Oil Company	x	..	..	..	..	..	..
Whiting Bros.	..	..	..	x	..	..	..
Wilmington Gasoline Company	x	..	..	..	..	..	..
Wilshire Oil Company	x	x	x	..	x	..	..
Post Exchanges and Ships Service Stores	..	x	x	x	..	x	x

[fol. 2629] Q. How are the orders placed by the bulk plant operators? Do you receive the orders from them or do you give them a ready supply?

A. Well, there are two systems; where bulk plants are supplied directly from the refineries, the bulk plants——

Q. I am referring only to that group.

A. Yes. The bulk plants place their orders directly on the refineries. We have a distribution department office at the Richmond refinery and at the El Segundo refinery, and these orders are sent directly to them and they arrange for the shipment from the refineries.

Q. From the bulk plants, how is the gasoline placed into the distribution channels, the movement of the stock from the bulk plants?

A. Well, that is beyond our jurisdiction.

Q. How is the gasoline sold? What are these various bulk plant operators; are they employees of Standard?

A. Well, there again I am not fully qualified on that. They may be or they may not. I am not familiar with just what——

Q. Do they buy the gasoline on consignment or do they buy or is it all Standard—does Standard have title to that gasoline in the bulk plants?

Mr. Hall: That is a legal conclusion. We will object on that ground.

A. I am sorry. I am not qualified to answer that. We arrange to see that these bulk products are supplied to these bulk plants, but I am not qualified to say just what the [fol. 2630] selling and——

Mr. Hall: Off the record.

(Discussion off the record.)

Mr. Thrody:

Q. Then as I understand, Mr. Olane, then it is your testimony on this first group that the gasoline is shipped directly from the refineries to the various bulk plants?

Mr. Hall: And, if I may first interrupt, you are referring to Exhibit A-1 and to the Distributive Areas Nos. 1 to 4, inclusive, is that correct?

Mr. Thrody: That is correct.

A. Yes.

Q. Can you tell us how many bulk plants are located in each of these distributive areas?

A. No, sir, I cannot. I would have to determine that.

Q. Are the dots on Plaintiff's Exhibit A for Identification —the dots in each of these areas, black dots, do they refer to the location of the various bulk plants?

A. Yes, sir.

Q. They——

A. Now, I might qualify that. That map was issued back in July and there may be some stations there that have been closed or there may have been a few that may have been opened, but otherwise they are approximately the marketing plants throughout these various states.

Q. Is there any set delivery time for gasoline from the refineries to the bulk plants, to each of the bulk plants? Do you have a regular pattern, a regular schedule?

[fol. 2631] A. Well, from Richmond to these points they are supplied in Distributive Area No. 1 by barge. Barges operate on a twenty-four hour basis, and in some cases they may make delivery at one time at night and at other times during the day. In connection with delivery by tank car and tank trucks, generally speaking that would be a day time delivery. I mean, the cars might be put in at any time but they will be unloaded during the day time.

Q. On the barges, where it is indicated the barges are used, that is continuous shipments from the refinery—you say, it is over a twenty-four hour period?

A. In Distributive Area No. 1 those barges operate in San Francisco Bay here on a twenty-four hour basis.

Q. Then the movement and flow of gasoline through barges is continuous over the twenty-four hour period each day?

A. Yes, sir.

Mr. Hall: Well, now, wait a minute. That was with respect to Area No. 1 only.

Mr. Thrody: That is the only one that refers to barges?

Mr. Hall: Oh, no.

A. There is a considerable number of them wherein there are barges.

[fol. 2615] [Stamp:] Filed Mar. 26, 1948. Edmund L. Smith, Clerk, by Wm. A. White, Deputy Clerk

DEFENDANTS' EXHIBIT JJ

Original

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil Action No. 6159-Y

UNITED STATES OF AMERICA, Plaintiffs,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Corporation, and Standard Stations, Inc., a Corporation, Defendants.

Depositions of Francis S. Olaine, L. M. Bussert, and Harry T. Hays.

Tuesday, March 9, 1948.

[fol. 2616] William C. Dixon, Special Assistant to the Attorney General; W. Alan Thody, Special Assistant to the Attorney General; Lawrence W. Somerville, Special Attorney, Antitrust Division, Department of Justice, 1602 U. S. Postoffice & Courthouse, Los Angeles 12, California, Madison 7411, Extension 285, Attorneys for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil Action No. 6159-Y

UNITED STATES OF AMERICA, Plaintiff,

v.

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., Defendants

STIPULATIONS REGARDING THE TAKING OF DEPOSITIONS

It is hereby stipulated by and between plaintiff and defendants, by their respective attorneys, that depositions of

Mr. Hall: Barges on the Columbia River,——

Mr Thrody:

Q. But only as far as the barges on No. 1,——

A. Distributive Area No. 1.

[fol. 2632] Q. And then what is the time of loading for tank cars on Areas Nos. 1, 2, 3, and 4? Is that continuous or is that just during certain hours of the day?

A. That is during the normal working hours of the day at the refineries.

Q. Now, that is so with respect to each of these areas referred to in the first category, Nos. 1, 2, 3, and 4?

A. With respect to tank cars.

Q. Tank cars, that is what I understand. You mean by that that the deliveries are made every day to——

A. (Interposing) The loading of tank cars. We have a five day work week at the refineries. In other words, there is no loading, generally speaking, on Saturday, and, of course, none on Sunday or on holidays. But during the normal working hours, why, tank cars are loaded every day.

Q. So, for five days each week then tank cars will be leaving for these various bulk plants?

A. Yes.

Q. Is that correct—somewhere in these various areas, in the areas to which you have referred, 1, 2, 3, and 4?

A. Yes, sir.

Q. What is the schedule for loading of tank trucks?

A. I am not familiar with the tank trucks loading schedule because I believe in some cases they operate beyond the normal eight hour working day and they may operate until later on in the evening. I am not familiar with just what those schedules are.

Q. Would they load every day?

[fol. 2633] Mr. Hall: Whereabouts, Mr. Thrody?

Mr. Thrody: I am referring to the particular four distributive areas, 1, 2, 3, and 4.

Mr. Hall: Where generally the products are coming directly from the refineries to?

Mr. Thrody: That is all.

Q. The testimony you have given refers only to this category?

A. Yes.

the herein named deponents shall be taken before Edith Goewey, Notary Public for the County of San Francisco, State of California, and that such depositions shall be taken down stenographically and then transcribed. The taking of such testimony shall begin at 2:00 P. M. on the 9th of March, 1948, at Room 1712 of the Standard Oil Building, 225 Bush Street, San Francisco, California, and shall con-
[fol. 2617] tinue until completed within the time allowed for the taking of testimony.

Names of Deponents: Francis Olane, L. M. Bussert, Harry T. Hays.

Dated March 2, 1948.

William C. Dixon, W. Alan Thody, Lawrence W. Somerville, Attorneys for Plaintiffs. By Alan Thody. Lawler, Felix & Hall, Pillsbury, Madison & Sutro, John M. Hall, Attorneys for Defendants. By John M. Hall.

[fol. 2618]

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Q. Every day then tank trucks will be——

A. (Interposing) Dispatched, yes.

Q. Those tank trucks and tank cars will go directly to the bulk plants in each of those areas referred to?

A. Yes, sir.

Q. Each day?

A. Yes, sir, substation bulk plants in those areas.

Q. Is there any established routine or delivery schedule for each bulk plant? By that I mean, for instance, every Thursday does "Bulk Plant X" receive a delivery of gasoline, or is it only in pursuance of the orders placed by them?

A. That is right, in pursuance of the orders placed by them. There is no specific day or time that these orders are to arrive.

Q. So, each bulk plant would not necessarily receive a daily shipment?

A. Oh, no, sir—no, sir.

Q. Do you know of the capacity of each of—the gasoline capacity of each—refining capacity of each of the refineries?

[fol. 2634] A. No, sir, I do not.

Q. Do you have a breakdown on the types of petroleum products, the classifications of various types of petroleum products distributed by you? In the industry is there any general recognized classification of petroleum products?

A. Well, I don't know just exactly how to answer that question. Petroleum products will cover a very considerable number.

Q. Are they referred to sometimes as package goods and sometimes as bulk goods?

A. Oh, yes, sir. That is what we have in this sheet.

Q. This refers to—only to——

A. (Interposing) Bulk products.

Q. And by bulk products——

Mr. Hall: Just a minute. When counsel said "this," he was referring to document which has been marked Plaintiff's Exhibit A-1 for Identification.

Mr. Thrody:

Q. In preparing Exhibit A-1 for Identification, you used the term "bulk distribution." What is meant by that term?

A. Bulk distribution is meant to apply on those products that are moved from the refineries in tank cars, tank trucks,

[fol. 2619] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Civil Action No. 6159-Y

UNITED STATES OF AMERICA, Plaintiffs,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Corporation, and Standard Stations, Inc., a Corporation, Defendants

Be It Remembered, that on Tuesday, the 9th day of March 1948, at 2:00 o'clock p. m., and Wednesday, the 10th day of March, 1948, at 9:00 o'clock a.m., pursuant to stipulation between counsel for the respective parties, at Room 1712, Standard Oil Building, 225 Bush Street, San Francisco, California, personally appeared before me, Edith Goewey, a Notary Public in and for the City and County of San Francisco, State of California.

Francis S. Olaine, L. M. Bussert, and Harry T. Hays, witnesses called on behalf of the plaintiffs herein.

W. A. Thody, Esquire, and Lawrence W. Somerville, Esquire, Special Assistants to The Attorney General, appeared as attorneys for the plaintiffs.

Messrs. Lawler, Felix & Hall, represented by John M. Hall, Esquire, and Messrs. Pillsbury, Madison & Sutro, rep-[fol. 2620] resented by Henry G. Hayes, Esquire, appeared as attorneys for the defendants.

The said witnesses, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the above-entitled cause, did thereupon depose and say as hereinafter set forth.

It was stipulated between counsel for the respective parties that the Notary Public, after administering the oath to the witnesses, need not remain further during the taking of these depositions.

It was further stipulated that the said depositions should be recorded stenographically by Harry A. Cannon, a competent official shorthand reporter and a disinterested person, and thereafter transcribed by him into longhand typewriting, to be read to or by the said witnesses, who, after making such corrections therein as may be necessary will subscribe the same.

and barges, and in tankers. Now, we are referring to the entire sheet there, I presume?

Q. Yes.

A. That covers all of those types of transportation handling what we refer to as bulk products.

Q. Does the term "bulk products"—or "bulk distribu-
[fol. 2635] tion" also refer to products other than gasoline?

A. Yes, sir. Refers to gas oils or other products that would be handled by these means of transportation, handling them in bulk form.

Q. Could you list them? What is embraced by "gas oil"?

A. Well, in our company we have products known as Standard diesel fuel, Standard stove oil, Standard furnace oil.

Q. Now, in—do all of the items go to the bulk plants?

Mr. Hall: You mean, all of the items he referred to in his previous answer?

Mr. Thrody: All the items referred to in the previous answer.

A. Not necessarily. There will be some bulk plants that will carry one or two grades of motor gasolines, possibly one grade of these gas oils I have just mentioned. Other plants will carry all grades of these various products.

Q. In respect to those classifications referred to in your previous answer, will the bulk plants have facilities for segregation in individual tanks, or will they have separate tanks for it?

A. They will have separate tanks. For example, a bulk plant that handles two grades of motor gasoline and one grade of gas oil, there will be three tanks, one for each grade of motor gasoline and one for the gas oil.

Q. Are lubricating oils included in the bulk distribution group?

A. Well, there are very few of these bulk plants that have bulk storage facilities for handling lubricating oils. Generally speaking, these bulk plants receive their lubricating
[fol. 2636] oils in package goods. That is generally speaking, of course, in this entire area (indicating) with all of these various bulk plants.

Q. And by "package goods" you are referring to—I would like to introduce or have marked for identification, the discussion marked "Package Goods Distribution—Map Exhibit 'B' ". Will you mark this "B-1 for Identification"?

(The statement entitled "Package Goods Distribution—Map Exhibit 'B'" was marked "Plaintiff's Exhibit B-1 for Identification.")

Q. Did you prepare this?

A. Yes, sir, I prepared this statement with respect to the map.

Mr. Thrody: Will you mark this map for identification?

(The map relating to Exhibit V-1 was marked "Plaintiff's Exhibit B for Identification.")

Q. Will you tell what this represents?

Mr. Hall: Counsel refers to the document just marked for Identification "Plaintiff's Exhibit B."

A. There are four identified distributive areas that are marked "A," "B," "C," and "D," which show the approximate areas that are served by the Richmond refinery, the El Segundo refinery, and the Willbridge and Point Wells Distribution Terminals.

Mr. Thrody:

Q. You prepared these?

A. Yes, sir.

Q. In your official capacity as Analyst in the Distribution Section?

[fol. 2637] Mr. Hall: He prepared them at our request, Mr. Thrody. I dont think that falls within his official duties, but they were prepared by him because of his knowledge of the subject matter.

Mr. Thrody:

Q. In reference to your testimony to the Distributive Areas 1, 2, 3, and 4 referred to in Exhibit A-1, in every instance does the gasoline go from the refinery only to bulk plants or in some instances does it go to marine terminals?

A. In some instances it goes to marine terminals insofar as District No. 1 is concerned, and in District—no, that is all—District No 1.

Q. Could you tell us what a marine terminal is?

A. That is a bulk plant that has facilities to receive bulk stock by barges and/or tankers, and also has facilities for

redistributing that stock by tank cars and/or tank trucks.

Q. It is not necessarily a larger storage facility than a regular bulk plant?

A. Yes, sir, they would have larger facilities than the so-called bulk plants which are located at inland destinations and receive stocks by tank cars and/ tank trucks only.

Q. Do you know the capacity of this marine terminal which is supplied in Distributive Area No. 1 referred to in Exhibit A-1?

A. No, I do not have the information available here with respect to the tankage facilities at the various marine terminals in Distributive Area No. 1.

Q. Is there a standard size for the capacity of the vari-
[fol. 2638] ous bulk plants? Is there any uniform standard as to size? I assume there are large bulk plants and small bulk plants?

A. Yes, there are. Very definitely it varies with the size of the communities, the area which the bulk plant serves. I am not qualified to say there is a uniform measure for those plants. I know that in a great many of them there are certain size tanks that are of a certain capacity that generally are used, but they will vary from bulk plant to bulk plant.

Q. In Distributive Area No. 1, referred to in Exhibit A-1, do you know of the size of any of the bulk plants in that area?

A. Well, the number of points that are located in Distributive Area No. 1, I can presume from my—just my experience in handling shipments to those places that there are bulk plants that have tanks that are approximately 463 barrels capacity. That is known as a 10½ by 30 foot tank. We have a great many of those throughout our entire distributive areas, so I am quite certain there are tanks of that size in these bulk plants.

Q. What are these bulk plants used for?

A. They are used to receive bulk products in large quantities for redistributing, over which we have no jurisdiction, in small quantities to their particular marketing area.

Q. Are they used for storage purposes?

A. Well, yes. That is why they are there, for storage purposes, so they can stock from those tanks.

Q. On a permanent basis?

A. Yes, sir, on a permanent basis.

[fol. 2639] Q. Or is it storage for—in connection with the distribution and the subdistribution?

Mr. Hall: Your question is not clear, Counsel. I am going to object to it on the grounds it is vague and uncertain, it calls for a conclusion of the witness, speculation and conjecture.

Mr. Thrody: In the placing of these bulk plants, was there any study made as to the particular advantages of one location over another?

Mr. Hall: Referring to the number of plants generally or in any particular?

Mr. Thrody: In general—in, well, in general.

A. Well, the bulk plants are not under the jurisdiction of the Distribution Department, and we do not determine their location, but no doubt the department that handles that puts in adequate study in determining the geographical location of a bulk plant, for example, to serve their particular trade that is available in that area.

Q. I understand from your testimony then its principal function is for redistribution?

A. The bulk plants?

Q. Yes.

A. Yes.

Q. I refer to now in exhibit marked for identification A-1 to the second category of distributive areas, Area No. 5, and Area No. 6. I notice that you have indicated that these areas are supplied by tank cars and/or tank trucks from the Salt Lake City refinery—Salt Lake City refinery of the Utah [fol. 2640] Oil Refining Company, is that correct?

Mr. Hall: No, that is not correct, Counsel. If you will read the question.

(The record was read.)

Mr. Hall: That is not what A-1 shows. A-1 shows that Distributive Area No. 5 is supplied from the Salt Lake City refinery of the Utah Oil Refining Company, and that Distributive Area No. 6 is supplied from the El Paso refinery of the Standard Oil Company of Texas.

Mr. Thrody: That is correct.

Q. Referring to Distributive Area No. 5, can you describe the manner in which the bulk goods are supplied from the Utah Oil Refining Company to the bulk plants indicated on the map in that particular area?

A. We set up standing instructions, standing order instructions at the Salt Lake refinery and the stations that

are shown in that area marked "No. 5" are instructed to send their orders to Salt Lake for filling, and upon receipt of those orders then the Salt Lake refinery ships the bulk stocks back to the bulk plants.

Q. In Area No. 5 referred to will the tank cars and tank trucks load at the Utah Oil refinery at Salt Lake City or are there sub-terminal points?

A. Well, I don't know that I am fully qualified to answer that. My understanding is that they load at the Utah Oil Refining Company. Now,—and that is at Salt Lake City, and they have tank truck loading and tank car loading facilities, and are shipped directly from the refineries, I under- [fol. 2641] stand, but I am—I have never been to Salt Lake City and I can't say I am fully qualified technically to say just exactly what that layout is there.

Q. Is that gasoline received from the Utah Oil Refining Company purchased by Standard?

A. I am not fully qualified to answer that. We are informed as to the quantity that is available to us there for reshipment into this distributive area and we arrange to see that that quantity is not over-shipped over any given period of time.

Q. Is that pursuant to a contract?

A. Well, there again I am not familiar with just what the arrangement is with the Utah Oil Refining Company. As the Distribution Department, we receive information indicating that volume that is available for shipping.

Q. Is there a guaranteed volume available to you, a guaranteed supply?

Mr. Hall: I think that calls for the conclusion of the witness—is objected to on that ground.

Mr. Thrody: What is the volume?

A. I am sorry, I am not in a position to say just exactly what that is at this time. I don't know. But it is sufficient to take care of the distribution.

Q. What determines the volume?

Mr. Hall: You mean, that is the volume that is shipped out of the refinery at Salt Lake?

Mr. Thrody:

Q. What determines the volume of gasoline made avail- [fol. 2642] able to you for shipment through Distributive Area No. 5?

A. Well, that is determined by orders from—whatever rangement it is—contract—or such as it is. I'm not miliar with just what that is.

Q. You do not know—do I understand your testimony be that you do not know whether the—strike that.

Off the record.

(Discussion off the record.)

Q. Are each of the dots referred to in Exhibit A in Distributive Area No. 5 bulk plant locations?

A. Yes, as far as I know. I might make this qualification. There may be an occasional one in this district, in istributive District No. 5, and in others, other districts at happen to be shown there that may just receive package stocks. That is a marketing plant map.

Q. Well, confine——

A. Generally speaking, those are bulk plants, all of those ints in District No. 5.

Mr. Thrody: Off the record.

(Discussion off the record.)

Q. In Area No. 5 do you know how the bulk plants are erated, either by Standard personnel or by some other rangement?

A. No, sir, I do not.

Q. Do you know ~~how often~~ shipments are made out the Utah Oil refinery in, first, tank cars to the various lk plants?

A. No, sir, I do not. There are quite a number of stations in there, and I would presume that——

[Vol. 2643] Q. By "stations" you refer to bulk plants?

A. I mean bulk plants.—that deliveries—shipments, ther, out of Salt Lake refinery are possibly made daily.

Q. But you cannot say?

A. I cannot state that definitely, no, sir.

Q. What is the situation with respect to tank trucks?

A. That would be the same situation as far as I am ncerned. I cannot definitely state that it is done daily.

Q. Do you know how shipments are made? Are they ade pursuant to orders from the various bulk plants?

A. Yes, sir. The orders are placed by the bulk plants ith the Salt Lake refinery and they are shipped.

Q. Are they placed directly with the Utah Oil Refining Company or are they placed with a Standard representative?

A. Our standing order instructions are placed directly with Utah Oil Refining Company. I might have to double check that to be absolutely certain, but I believe that to be the procedure.

Q. Are all types of bulk goods distributed from the Utah Oil Refining Company to these various bulk plants?

Mr. Hall: You mean—may I have the question, please?

(The record was read.)

Mr. Hall: You mean, Mr. Thrody, the category that he previously referred to as gasoline, stove oil, diesel oil, furnace oil?

Mr. Thrody: That is right.

[fol. 2644] A. They have, I believe—I would have to double check this—both grades of motor gasoline and certain grades of the gas oils, but I can't state definitely.

Q. Are there any lubricating oils?

A. No, sir.

Q. Will you address your remarks now, Mr. Olane, to Distributive Area No. 6 as referred to in Exhibit A-1 for Identification; do you know what arrangements have been made by Standard Oil Company of California with the Standard Oil Company of Texas for the supply of bulk goods for Distributive Area No. 6?

A. We are informed as to the volume that is available to us at El Paso and we gauge our distribution accordingly. We don't enter into the arrangements as to the volume that is to be available there at El Paso. We are told as to what is going to be available to us, but we gear our distribution accordingly.

Q. Is that a fixed amount quarterly or annually or——

A. Well, it is a fixed amount, but it may vary from month to month or quarter to quarter. That depends on their production activities at El Paso.

Q. Do you know what determines that other than——

A. (Interposing) No, I don't. No.

Q. Will the demand of the various bulk plant operators in the bulk plants located in Distributive Area No. 6 have any relationship to that volume?

Mr. Hall: He said already he doesn't know, Mr. Thrody, [fol. 2645] what does regulate that amount that is available. I don't object to you asking him questions within his province. I don't think he should be called upon to speculate.

Mr. Thrody:

Q. Is it within your knowledge that Standard of Texas is able to supply all of your needs?

A. No, I am sorry, I couldn't say as to that.

Q. Do you know whether or not the supply arrangement with respect to Area No. 6 is worked out pursuant to a contract?

A. No, I am not familiar with that.

Q. Are the tank cars referred to in your discussion of Area No. 6 tank cars under the jurisdiction and control of Standard of California?

A. Yes, sir.

Q. And is the same situation true with respect to fuel trucks?

A. Yes, sir.

Q. Do you have any knowledge as to a schedule of deliveries made from the El Paso refinery to the bulk plants in Area No. 6?

Mr. Hall: That is not clear to me.

Mr. Thrody: Strike the question.

Q. Are tank cars loaded regularly from the El Paso refinery to supply the bulk plants?

A. Yes, sir.

Q. How many days per week?

A. Well, I can't definitely state. The tank cars are loaded every working day, but—well, I just can't make that definite statement. The shipments are regularly made from El Paso into District No. 6.

Q. What do you mean by "regularly made"?

[fol. 2646] A. Well, these stations have their instructions to place their orders for bulk products on the El Paso refinery, and the El Paso refinery has instructions from us to supply these stations. So, depending on the volume of the orders going in there will indicate how much is being shipped from the El Paso refinery.

Mr. Hall: In referring to—may I ask the witness this?

Mr. Thrody: Yes.

Mr. Hall: In referring to "stations," do you mean "bulk plants"?

A. Bulk plants, pardon me.

Mr. Thrody:

Q. Are there any instructions to the bulk plants that they should place their orders on regular intervals on a weekly basis, on a monthly basis, or pursuant to any set period?

A. The bulk plants have instructions to place their orders for bulk stocks on the El Paso refinery as they require replenishment of bulk stocks.

Q. Is it customary not only with respect to bulk plant operators, generally, that they place orders for replenishment of bulk goods when their supplies reach any, their reserves reach any particular level; that is, is it customary for them to wait until they are half empty or third empty or quarter empty?

A. Well, I can't say that there are any specific instructions as to exactly when they are to place their orders in relation to the inventory that they have on hand in their tanks. That will be governed by their volume that is moving [fol. 2647] through those tanks which will vary from time to time, and——

Q. Is there any recognized established dealing in the industry with respect to replenishing their reserves after it reaches a particular level?

A. I can't say as to that. That will be governed to some extent on the location of the bulk plant and the length of time that it takes their bulk stocks to come from their supply source or refinery source.

Q. Insofar as Area No. 6 is concerned, do I understand your testimony here again to be that you have no knowledge as to the distribuiton methods employed after the bulk plant?

A. That is correct. Until the stock arrives at the bulk plant only.

Q. I should like now to direct your attention, Mr. Olane, to the third category of your breakdown on Exhibit A-1 for Identification entitled "Bulk Distributive Areas Supply by Distribution Terminals of the Standard Oil Company of California." You have referred there, Mr. Olane, to distribution terminals. What do you mean by that designation?

A. Those are terminals that receive bulk products from

the refineries by barge and/or tanker and have facilities to receive these products, store them, and reship them by tank car and/or tank trucks to bulk plants.

Q. Well, how is the gasoline distributed from the distribution terminals to these bulk plants? Is there any general way or does that vary?

Mr. Hall: Pardon me, just a moment, Mr. Thrody. Doesn't [fol. 2648] that appear from Exhibit A-1 for Identification?

Mr. Thrody: I think that only refers to the distribution terminals, or is this—off the record.

(Discussion off the record.)

Q. Mr. Olane, I refer you to your—the third category under Exhibit A-1 and ask—and specifically as to Distributive Area No. 8—Distributive Area No. 8 you have indicated is supplied by tank trucks from Moss Landing. What do you mean by that statement?

A. I mean, the bulk plants in Distributive Area No. 8 are supplied.

Q. Are supplied from the distribution terminal?

A. At Moss Landing.

Q. At Moss Landing?

A. Yes, sir.

Q. Thank you. In your discussion of the other distributive areas under this category, namely, Distributive Areas Nos. 7 to 23, inclusively, do you indicate that the gasoline is supplied from the refinery to the particular distribution terminals referred to under the discussion of each of those areas and then in turn supplied by each or by such distributive area to bulk plants?

A. Distribution terminals to bulk plants by tank trucks and/or tank cars in the respective distributive areas.

Q. In some instances you have discussed transportation by tanker. I refer specifically to your discussion, "Distributive Area No. 20" in Exhibit A-1. Point Wells, I assume, is the distributive area—is the distributive center or [fol. 2649] distributive terminal?

A. Yes, sir.

Q. And that particular distribution terminal is supplied by barge from the refinery, is that correct?

A. It is supplied by tanker from the refinery.

Q. No—or barge.

A. Well, the area—the bulk plants in Area No. 20 are supplied from Point Wells by tank cars, tank trucks and/or barges from Point Wells, but——

Q. By that you mean the terminal plants—the bulk plants.

A. Are supplied, but Point Wells is supplied by tanker from Richmond and/or El Segundo.

Q. Are those tankers operated by Standard?

A. Yes, sir.

Q. Referring generally, Mr. Olane, to the general distribution of bulk products throughout the area indicated or area set forth by you in your Exhibit A for Identification, do you have any—to your knowledge do you know of the number of tank trucks either owned, operated, or leased by you?

A. No, sir, I do not.

Q. Do you know of the number of tank cars which you use in this overall area?

A. No, sir, I do not.

Q. Do you know the number of tankers used by you in your general distribution in this area?

A. No, sir, I do not.

Q. Is there a fleet of tankers used exclusively for coastal distribution?

A. In our tanker fleet there are various tankers that are [fol. 2650] used in supplying these various bulk terminals up and down the Pacific Coast.

Q. They are used exclusively for that distribution—strike that.

Mr. Hall: Pardon me—off the record.

(Discussion off the record.)

Mr. Thrody:

Q. Can you state, Mr. Olane, approximately how many tankers are used constantly for distribution of bulk products in the Pacific Coastal trade for the United States markets?

Mr. Hall: You mean, say, during the year 1946, or something like that, because——?

Mr. Thrody: Continuously.

Mr. Hall: It differed during—the situation was entirely different during the war, you know.

Mr. Thrody: Presently used.

Mr. Hall: Well, I don't want him to state presently. This case takes only up to '45. Well, that is all right. You can answer the question.

A. No, I cannot. I am not in a position to answer that question specifically, because I don't know just how many tankers are in that particular trade.

Mr. Thrody:

Q. In the area referred, covered by Exhibit A, do you know of the total number of bulk plants used for the distribution of bulk products?

Mr. Hall: Well, pardon me. That would be a counting of all the dots on Exhibit A, wouldn't it? I have no objection.

[fol. 2651] A. Offhand I can't answer that question, because——.

Mr. Thrody:

Q. If we were to count the dots on this map, would that give us an accurate portrayal of the number of bulk plants?

A. No, sir. There may be some points on there where plants have been closed, and I did notice one there—in connection with war activities there was some Camp so-and-so indicated there. We may have had temporarily a plant, but it has now been closed.

Q. Was this accurate as of July 1947, at the time of its preparation?

A. Well, I don't know the exact reason for the preparation of that particular map at that time. So, I can't say that that accurately portrays the number of bulk plants that we have under discussion here.

Q. This is substantially accurate, you would say, with the minor exceptions that you have referred to?

A. Yes, I would say that is substantially accurate, but——

Mr Hall: And the map you have been referring to in the last preceding questions and answers is, of course, Exhibit A for Identification, is that correct?

Mr. Thrody: That is correct.

A. Yes.

Q. I direct your attention now, Mr. Olane, to the map prepared by you and marked for identification Plaintiff's

Exhibit B, and the statement prepared by you and previously identified by you as Exhibit B-1. Mr. Olane, what goods are embraced in your designation "Package Goods [fol. 2652] Distribution" as referred to in Exhibit B-1 for identification?

A. Well, they would be the products that these bulk plants do not have in bulk storage and therefore must receive these particular products in what we refer to as package form, that is, in iron barrels or cans and cases or other types of containers.

Q. What are those products?

A. Well, they could be at some one—at an individual bulk plant, for example, that does not have a sufficient volume of one grade of motor gasoline business to warrant a bulk tank, it could receive that particular product in iron barrels.

Q. What is the product—what are the products?

A. That would vary from bulk plant to bulk plant. I mean, I couldn't give you a list of products.

Q. Of those package goods, which types are normally sold through service station dealer outlets?

A. I am not in position to answer that one.

Q. Is RPM can oil generally known as a package goods?

A. It is generally known as a package goods.

Mr. Thrody: Off the record.

(Discussion off the record.)

Q. Do you have a breakdown of the types of products covered under the term "package goods"? Are lubricatng oils considered package goods?

A. Generally speaking, they are considered package goods. The only places where they would not be considered package goods would be a few exceptionally large bulk [fol. 2653] plants where there is sufficient business to warrant that these bulk plants receive lubricating oils by tank cars and/or tank trucks.

Q. Are lubricating oils packaged in large drum containers considered package goods.

A. Large drum containers? I presume——

Q. Twenty gallon or forty-two gallon.

A. Fifty-three gallon barrels are, generally speaking, the general size of the lubricating barrels.

Q. Is there any fixed limit on what is a package goods; for instance, is over fifty-three gallons considered bulk and under fifty-three gallons considered package goods?

A. Well, under fifty-three gallons would be the barrels and the cans and the smaller types of containers. But containers that would be over fifty-three gallons, I'm not familiar with that.

Q. Well, under fifty-three, is that considered package goods?

A. That would be considered package goods, yes, sir.

Q. I refer you, Mr. Olane, to the first group in Plaintiff's Exhibit B-1 for Identification entitled "Package Goods—Supplied by California Refineries—." Is there a packaging plant at Richmond refinery?

A. Yes, sir.

Q. Is there another packaging plant at the El Segundo refinery?

A. El Segundo?

Q. El Segundo refinery.

A. Yes, sir.

[fol. 2654] Q. Do they package lubricating oils?

A. Yes, sir.

Q. And greases?

A. Yes, sir.

Mr. Hall: Where are you referring to now?

Mr. Thrody: The first group.

Mr. Hall: Both Richmond and El Segundo?

Mr. Thrody: Yes.

Mr. Hall: Your last two questions weren't clear as to whether you were talking about El Segundo or Richmond. Were you talking about both?

Mr. Thrody: I was talking about both.

Q. Do they package at Richmond?

A. They package both the lubricating oils and greases at Richmond, and the lubricating oils at El Segundo, and I am not too certain as to the greases at El Segundo. That is something I cannot make a definite statement on.

Q. Now, on Distributive Area No. A—I am referring to Exhibit B for Identification—you state that this area is supplied by box cars or package trucks from the Richmond refinery. What are the destinations of those shipments

from the Richmond refinery. Do they go directly to the bulk plant operators?

A. Yes, sir. They go directly to the bulk plants.

Q. Are shipments made pursuant to orders placed by those bulk plant operators?

A. The orders are placed by the bulk plants.

[fol. 2655] Q. Are box cars loaded daily at the Richmond refinery for package goods for shipment into Area A?

A. They are loaded during the regular working week, and I presume that there is enough business in the way of package goods to say definitely they are loaded daily. But there could be days when no package cars might be shipped.

Q. Are package goods of this character even sent to the accessory warehouses in this area?

A. I cannot answer that. I am not familiar with that phase of it.

Q. You do not know whether the bulk plant operators——

Mr. Hall: Off the record.

(Discussion off the record.)

Mr. Thrody:

Q. Coming to Distributive Area No. B in Exhibit B-1 for Identification, do I understand from your previous statement that all types of lubricating oils, with the exception of minor greases are packaged at El Segundo refinery?

Mr. Hall: Well, I think his previous statement was that he was uncertain about the packaging of greases at El Segundo. So, I don't think—I think the question should be reframed.

A. May I ask this, too. I would like to qualify that. When you said all brands or all grades of lubricating oil, there may be some particular types of lubricating oil that may not be filled at the El Segundo refinery. I am not qualified to say definitely on every one of the lubricating oils.

Mr. Thrody:

Q. Do you know what types are packaged at El Segundo?

A. No, sir, I do not.

[fol. 2656] Mr. Hall: You mean types of lubricating oil?

Mr. Thrody: Types of lubricating oil.

A. No, I do not.

Q. Are shipments made from the El Segundo refinery of lubricating oils to all of the bulk plants within Distributive Area No. B, as reflected by Exhibit B for Identification, from the El Segundo packaging plant?

A. Yes. There may be a few of the bulk plants that do not have warehouses and do not handle package goods. They only handle bulk stocks. There are a few of those scattered through our entire area as shown on this exhibit.

Mr. Hall: Exhibit B?

A. Exhibit B.

Mr. Thrody:

Q. Are all the dots indicated on Exhibit B in Marketing Area or Distributive Area B designations for bulk plants?

A. Yes, sir.

Q. Is this an accurate designation of such bulk plants; have there been any changes since you——?

A. There may have been some changes and some of those plants may have closed down; there may have been some, a few, where a new plant opened.

Q. But this is substantially accurate?

A. This is substantially accurate, yes, sir.

Q. Coming up to Distributive Area No. C, as referred to in Exhibit B-1 and as represented by Exhibit B, is there a packaging plant located at Willbridge——

[fol. 2657] A. (Interposing:) Certain of the——

Q. —or is that just a distributive terminal?

A. That is a terminal and they fill certain of their bulk products in packages. Certain bulk products are filled in iron barrels and shipped out with other package goods to these bulk plants in Distributive Area C.

Q. What is the source of the products from—what is the source of the products at Willbridge—the source of the merchandise?

A. The bulk products are received in Willbridge by tanker from the refineries and then at the Willbridge terminal they are filled into iron barrels. Now,——

Q. Of all sizes?

A. No. Just into iron barrels.

Q. What size?

A. Well, generally they are fifty-three gallon barrels, fifty-two gallon or fifty-five gallon barrels.

Q. Is there any smaller packaging done at Willbridge?

A. No, they do not do any of the small packaging at Willbridge. The small package goods for Willbridge and also used by Willbridge for redistribution to these bulk plants in Distributive Area C are received from Richmond in box car lots.

Q. Are they sent directly from Willbridge to the bulk plant locations? Directly to the bulk plant locations shown in Distributive Area C?

A. Yes, sir.

Q. I refer your attention to Distributive Area D, as indicated in Exhibit B-1 and as reflected by Exhibit B. Will you explain the nature of the operation conducted at Point [fol. 2658] Wells?

A. Bulk products are transported from the refineries by tanker to Point Wells, and at Point Wells they have facilities for filling iron barrels of these various bulk products; and with regard to the lubricating oils, they have a lube blending plant there which receives the bulk stocks from the refinery by tanker. These are base lubricating oils and they are blended there in the lube blending plant, and various grades of lubricating oils are made at Point Wells and they are also packaged at Point Wells.

Q. Is all the packaging at Point Wells—strike that.

A. Possibly I could clarify that.

Q. Just a second. Are the lubricating oils received from the refinery by barge kept separate from the lubricating oils which are blended?

A. The lubricating oils are received from the refinery by tanker rather than by barge, as you just mentioned, and these are base lubricating oil stocks and are segregated at Point Wells and then put in their mixing packaging operation up there and placed into barrels and other packages. Now, other package stocks are also received directly from Richmond in box car lots at Point Wells, greases and various other package stocks that are only manufactured at Richmond, and these are warehoused at Point Wells and then are sent out to these bulk plants in Distributive Area D along with packages that are packaged at Point Wells from bulk products at that point and lubricating oils at that point.

Q. Is there any particular size container—strike that. [fol. 2659] Are all sizes of packaging—is the packaging per-

formed at Point Wells done in all types of containers or is just a certain limited size?

A. I cannot answer that question, because I am not familiar with the entire packaging setup with respect to lubricating oil packaging done at that point and I don't know that it applies on all grades of lubricating oils referred in Distributive Area D. Certain of the lubricating oils no doubt come from Richmond in box car lots in packages.

Q. When you refer to box car lots, does that mean large containers or——

A. No, I mean barrels or in smaller containers than barrels which are in boxes or cases, or that is, cans and other smaller types of containers.

Q. Directing your attention now, Mr. Olane, to the small lubricating RPM containers as used in automobiles, small quart containers, do you know where the packaging of that small goods is performed?

A. No, I cannot state that that is performed at Point Wells. I don't know to the extent that that lube blending plant has been completed for its packaging operations.

Q. Point Wells does package small containers, small RPM containers?

A. Well, I can't definitely state that. I know they package the barrels and I believe they handle the smaller containers but I cannot state definitely on that.

Q. Do you know whether or not Willbridge packages small containers?

A. Definitely not. Willbridge does not.

[fol. 2660] Q. Do you know whether or not Richmond packages small containers?

A. Yes, sir, Richmond does.

Q. On these box car lots which emanate from the Richmond refinery to Point Wells by tanker—is that what it is, tanker box car lots, too?

A. No. They go by rail.

Q. By rail?

A. Yes.

Q. Does that also include small RPM containers?

A. It would include the small RPM containers if Point Wells does not handle that type of packaging. That is what I am not clear on. If they do, they would not be

shipped from Richmond. They could come up from Richmond by tanker in the base stocks and the lube blending plant would handle the packaging in the small containers. I am not certain about the small containers. I am not familiar with that detail of the operation with that lube blending plant at Point Wells.

Q. You state, Mr. Olane, you are employed in the Distribution Division?

A. Distribution Department.

Q. Distribution Department of Standard Oil of California?

A. Yes, sir.

Q. Could you tell me approximately how many personnel are employed in that division?

Mr. Hall: In that department, you mean?

Mr. Thrody: In that department.

A. I believe at the present time there are twenty-nine. I am not absolutely certain as to that exact number.

Q. What is the area covered by—the area of distribu- [fol. 2661] tion covered by the Department? Do you handle international shipments, distribution of international shipments or solely domestic shipments that you are concerned with?

A. We are concerned with domestic shipments. We do not handle the distribution on international—or foreign shipments, I presume? We have a Foreign Trade Department that handles that foreign trade phase of it.

Q. The states indicated in Exhibit A, that covers the total area of your distribution?

A. No, it does not cover the total area. We handle the distribution of the entire area in that exhibit.

Q. In addition what other area?

A. The Territory of Alaska, and Hawaii, is a part of our domestic distribution.

Q. The principal function of the Department is the distribution of bulk goods from the refineries to the bulk plants?

Mr. Hall: No. That is not what he said, Mr. Thrody.

Mr. Thrody:

Q. What is its principal function?

A. The distribution of petroleum products in the quantities desired and at the points desired from our refineries and other sources of supply, and at the lowest practicable distribution cost. Now, that would cover bulk products and package products.

Q. Does the function of the Department cease at the bulk plant level?

A. Yes, sir. We arrange to see that the bulk products [fol. 2662] and the package products get to the bulk plants, and that is the extent of our jurisdiction.

Q. What department would handle the distribution after, from the bulk plant level to the consumer level?

A. That would be the Marketing Department.

Q. Are there any peculiar problems of the Standard Stations, Inc., aside from the Standard of California, which you would handle?

A. We have in our distribution activities—we don't handle the distribution with respect to the Standard Stations. That is all beyond the bulk plant. Our own operations take up to this bulk plant and from there on out it is Marketing.

Q. Do you have any figures on the overall capacity of all of the bulk plants?

A. No, sir, I do not.

Mr. Thrody: Off the record.

Mr. Hall: Is that all with this witness?

Mr. Thrody: Yes.

Cross-examination.

Mr. Hall:

Q. It is true, is it not, Mr. Olane, that the Distribution Department is responsible for the efficient and economical overall distribution of the Company's petroleum products, both bulk and package?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And to that end it is the duty of the department, is [fol. 2663] it not, to see that supplies of products will be

placed economically where and when they are needed for ultimate distribution?

A. Yes, sir.

Q. It is true, is it not, that Standard Oil Company of California has no refineries outside the State of California—none that you know of?

A. Yes, sir, that is true.

Q. That is true?

A. That is correct.

Q. The only refineries that Standard Oil Company of California has are located in the State of California?

A. Yes, sir.

Q. And those refineries are located at Richmond, Bakersfield, and El Segundo?

A. Yes, sir.

Q. Now, in preparing the maps which have been marked Plaintiff's Exhibits A and B for Identification you had in mind a distinction between bulk and package goods, did you not?

A. Yes, sir.

Q. Now, take the map which is marked Plaintiff's Exhibit A for Identification. Will you tell us what the bulk ones are, the transit of which that map was designed to illustrate?

A. The products?

Q. The bulk products.

A. The bulk products—the names of the particular bulk products?

Q. Which that map was designed to illustrate the transit of,

A. Well, that covers Chevron Gasoline, Standard Diesel Fuel, Standard Furnace Oil, and Standard Stove Oil.

[fol. 2664] Q. There is a further qualification with respect to that map, is there not; namely, that it was designed to show the transit of those products in a fluid state by either tanker or barge or tank car or truck and trailer?

A. Yes, sir.

Q. It was not designed, was it, to show the transit of lubricating oil in drums, was it?

A. No, sir.

Q. When one of the fluids that you have described is put in some kind of a container, like a drum, then it becomes package goods, the transit of which is designed to be il-

lustrated by the map which is marked Plaintiff's Exhibit B for Identification?

A. Yes, sir.

Q. Is that right?

A. That is correct.

Q. Now, directing your attention to package goods for a moment and directing your attention to the point on Exhibit B for Identification which is marked "Willbridge" near the City of Portland in Oregon, from what source does Willbridge get the package goods which are sent out to the bulk plants from Willbridge?

A. Certain of the products move by tanker from the refineries to Willbridge, and they are packaged at Willbridge, and other package goods are received by Willbridge by box car lots.

Q. I see. Now, the stock that comes to Willbridge from a refinery by water would come from both Richmond and [fol. 2665] El Segundo, or just Richmond?

A. No, it would be Richmond and El Segundo.

Q. Now, directing your attention to Point Wells, which is near Seattle and is shown on the map which is Exhibit B for Identification, will you tell us again the source of the package goods that are sent out to the bulk plants from Point Wells?

A. Certain of the products are received from the refineries by tankers and are filled in containers at Point Wells, and other package goods are received from Richmond in box car lots.

Q. Do any of the package goods go to either Willbridge or Point Wells in box cars from El Segundo?

A. No, sir, not to my knowledge.

Q. Do any of the package goods to Willbridge or Point Wells go to those points from the refinery at Bakersfield?

A. No, sir. There are no shipments of package goods out of Bakersfield refinery. They have no packaging facilities at that point.

Q. Is it true that commodities that come to Point Wells and are there packaged, which you have described as coming from the refineries, would come from both El Segundo and Richmond?

A. Yes, sir.

Mr. Hall: That is all.

Mr. Thrody: That is all, Mr. Olane.

Francis S. Oliane.

[fol. 2666] 9:00 O'clock A. M., March 10, 1948, 1712 Standard Oil Bldg., San Francisco, California

L. M. Bussert, a witness called on behalf of the plaintiffs, being first duly cautioned and sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

Mr. Thrody:

Q. Will you state you full name for the record?

A. Leonardo Money Bussert.

Q. What position do you occupy with Standard Oil of California?

A. Manager, Operations Department, Marketing.

Q. How long have you held this position? Under this specific title.

A. Four days.

Q. In what capacity——

A. (Interposing:) Prior to that Assistant General Manager, Marketing Operations.

Q. Previous to that?

A. Well, that position was held for four years, that title.

Mr. Thrody: Off the record.

(Discussion off the record.)

Q. How long have you been associated with the Company?

A. Thirty and a half years.

Q. In what capacities?

A. Various capacities, from the present backwards, being Assistant District Manager, Assistant District Sales Man-[fol. 2667] ager, Superintendent of Sales, Special Agent.

Q. That is sufficient. Could you tell us what the function of the Marketing Division is or the Marketing Department?

A. Could I go off the record for an explanation, first?

(Off the record:)

A. As I understand it, the function of the Marketing Department is to market or take to the points of retailer and consumer usage the products to be offered for sale.

Q. Does the Marketing Department have various component divisions?

A. It does.

Q. Could you name some of them?

A. Wholesale Division, Retail, Standard Stations, Operations.

Q. Could you tell me what the function of the Operations Division is within the Marketing Department?

A. To supervise functionally all bulk plants and directly certain other bulk plants; supervise functionally certain accessory warehouses and directly operate other warehouses; to operate directly certain terminal operations and functionally supervise others; to take care of the required engineering pertaining to the Marketing Department's operations; to take care of the classifications of labor; to establish proper wage scales.

Q. That is sufficient. We are primarily interested here in distribution, marketing problems, rather than engineer-[fol. 2668] ing problems. Approximately how many people are employed in the Marketing Department?

A. Something over 3,000.

Q. And approximately how many people are employed in the Operations Division?

A. Well, just generally speaking, 500 in Operations.

Q. Do those 500 people operate out of San Francisco, or are you decentralized?

A. We are decentralized.

Q. Do you have divisions, or is the area broken down, the Marketing Area for Standard, broken down geographically or functionally?

Mr. Hall: Just a minute; let me have that question back.

(The record was read.)

Mr. Hall: That still isn't clear to me. Maybe it is to the witness. Are you talking about the whole company or the Marketing Department or the Operations Division of the Marketing Department?

Mr. Thrody: I will rephrase the question.

Q. Is the Operations Division—you say it is decentralized—is it divided to handle problems, to handle its assignments on a geographical basis or is it decentralized functionally? Do I make myself clear?

A. No, sir, you do not.

Q. Administratively how is the Operations Division set up?

A. It is set up into areas so that supervision can be given adequately and competently to an area that is best served from a certain location. I'd call it geographically and functionally, both.

[fol. 2669] Q. Do you have the personnel assigned through the territory, the Marketing Area, covered by Standard Oil or covered by the Operations Division?

A. I do not understand your question.

Q. Well, for the various localities you say you have this broken up?

A. Yes.

Q. Do you have men assigned in charge of a particular area—are you broken down into districts?

A. Yes.

Q. Into zones?

A. Yes.

Q. Could you describe just briefly how that is broken up; what is it, on a state basis?

A. It is not on a state basis. It is on areas considered the easiest for supervision from the central location.

Q. How many such areas do you have for supervisory purposes?

A. I think it is divided differently for Operations than it is for Sales. Which do you wish?

Q. For Operations.

A. Eleven areas.

Mr. Hall: How many was that?

A. Eleven.

Mr. Thrody:

Q. Could you describe briefly the administrative setup for each or for a single area? Do you have an area manager?

A. With respect to San Francisco and operations there, we have a superintendent whose headquarters are in Oakland. He has suitable assistants on the staff. They are responsible for the district operation of two loading racks [fol. 2670] and one plant in Oakland, one plant in San Francisco, and functionally responsible for the engineering and operations of an area from King City to the Oregon line, from the Pacific Ocean to a meandering line, generally speaking, coming down about 150 miles east of the ocean.

Q. Is that a typical setup for each of the eleven districts?

A. There is no typical setup. They are divided in areas consistent with the best administration.

Q. And the problems with respect to each area would be peculiar to that?

A. Yes, sir.

Q. When you say the Operations Division is charged with the functional distribution—or functional marketing——

A. Function operations.

Q. —functional operations——

A. Of the engineering.

Q. —does that refer to marketing or is that——

A. To marketing only.

Q. Could you describe what you mean by the functional operation?

A. In addition to the previous organization there are two managers within the area served by this operational office. They are primarily interested in the sales of products. All plants except those previously mentioned are under their personal direction. When they want repairs to the plants or to facilities of the Company, they make a request on the operational superintendent that he do such repairs.

Q. When you refer to "plants", you mean the bulk plants?

[fol. 2671] A. I do.

Q. Do you have any figures on the total number of bulk plants?

A. Exactly, no, but it is something in the order of 700.

Q. 700?

A. Scattered in the seven Western States, Alaska, and Hawaii, and the Mid-Pacific area.

Q. Does that 700 include that outside——

A. Yes.

Q. How many of the 700?

Mr. Hall: Let the witness answer.

Mr. Thrody: I'll finish the question.

Q. Does the 700 figure include also the bulk plants located outside of the confines of the United States, those located within the territory?

A. Yes.

Q. Approximately how many of that 700 are located outside of the United States?

Mr. Hall: You mean, Continental United States?

Mr. Thrody: Continental United States.

Mr. Hall: Just a minute; is this Continental in your phraseology Alaska, which is the northern part of the Continent, or is Alaska, Honolulu, Hawaii, considered Continental? Why don't you reframe your question?

Mr. Thrody:

Q. How many are located in Alaska, Hawaii, and Mid-Pacific?

A. About 28 in Alaska, 16 or 18 in Hawaiian Islands, and three other points in the Pacific. I might mention the three in the Mid-Pacific are not owned by the Company. They [fol. 2672] are only operated.

Q. Is there—those bulk plants located within the Continental United States, is there any classification made by you as to size?

Mr. Hall: Just a minute, please. Speaking of Continental United States, are you including Alaska?

Mr. Thrody: Yes, including Alaska.

Q. Of the remaining 651 within the seven states enumerated by you is there any classification as to size of those bulk plants?

A. No. In the sense that they are graded one to the other with respect to size, you mean? It that what you are after?

Q. Do you have large bulk plants and small bulk plants located in those seven states?

A. We do.

Q. In the industry and in your experience what is the capacity of what you consider a large bulk plant?

A. Capacity meaning what?

Q. The storage capacity.

Mr. Hall: You mean, storage capacity for bulk products?

Mr. Thrody: For bulk products.

A. Would you restate your original question again?

Mr. Thrody: Will you read it, please?

(The record was read.)

A. We have one over a million and a third barrels of storage, which is large.

Q. And what would be the capacity of some of your smaller?

[fol. 2673] A. 800, 1200, 1600 barrels bulk storage.

Q. For the purposes of the record, what is a barrel?

A. 42 gallons.

Q. The bulk plants located within the seven states which you have referred to, are all of these owned by Standard Oil?

A. Yes.

Q. Are they all operated by Standard Oil?

A. No.

Q. Could you describe the various methods of operation of these bulk plants?

A. Company operation and wholesale distributor operation.

Q. Could you differentiate the two types?

A. The Company operation is conducted entirely by personnel on Company payroll.

Mr. Hall: Pardon me a moment. You mentioned the word "Standard." You referred, of course, to Standard Oil Company of California, did you not?

Mr. Thrody: That is correct. Would you read the question and answer?

(The record was read.)

A. Wholesale distributor plants are operated by an individual appointed to operate that plant wherein he supplies all labor. Title to the plant remains with the Company.

Q. Are any bulk plants owned by Standard Stations, Inc.?

A. No.

Q. Approximately how many of the bulk plants located [fol. 2674] within the seven states are Company operated?

A. I haven't looked at the records for sometime, and the answer is completely a guess—probably 200 to 250.

Q. Then the remaining portion would be wholesale——

A. Distributor.

Q. —wholesale distributor?

A. Yes.

Q. Of the latter type, the wholesale distributors, are there various ways of operating those plants or do they all fit into the common pattern?

A. They fit into a common pattern.

Q. And the wholesale operator——

Mr. Hall: Wholesale distributor.

Mr. Thrody:

Q. —wholesale distributor, you indicated that title to the physical properties belongs to the Company?

A. Yes, sir.

Q. Who owns the gasoline?

A. The Company.

Q. The Company. How is the gasoline furnished to such wholesale distributors, on a consignment basis?

A. No, sir. Title remains with the Company.

Q. Could you describe to us what the function of each of these bulk plants is?

A. To receive and store bulk and package petroleum merchandise, warehouse same, which is then redistributed to its ultimate consumer or proximate ultimate consumer from those plants.

Q. Can you describe how the bulk goods are redistributed from the bulk plants to the ultimate consumer?

[fol. 2675] A. By means of bulk tank trucks, iron barrels, and customers who may call at the plant to have their containers filled or they picking up petroleum merchandise which is not bulk.

Q. What types of bulk products are handled from bulk plants?

A. Small and large, are you speaking about?

Q. I am referring to products, gasoline, lubricating oils.

A. Gasolines, kerosenes, thinners, solvents, gas oils, heating oils——

Q. Which of such products——

Mr. Hall: Wait a minute; let him finish.

Mr. Thrody:

Q. Is that all?

A. —and in some exceptional cases other products that might be stored in the bulk, exceptional meaning only in the sense that a demand for that particular product is such that it would be handled in bulk.

Mr. Hall: Did your question call simply for bulk products?

Mr. Thrody: Yes.

Q. Are there other products, other than bulk products, that are marketed through the bulk plants?

A. Yes.

Mr. Hall: Wait a minute; that calls for the conclusion of the witness. You said marketed through—it is my understanding that the bulk plants do not market anything.

Mr. Thrody:

Q. That are redistributed from the bulk plants.

A. As previous- indicated, petroleum merchandise—products.

Q. Do you mean in addition to those products—do you [fol. 2676] mean there are products in addition to those enumerated by you in your previous answer—are there other products other than the ones that you have listed?

A. Yes, sir.

Q. What are they?

A. Petroleum merchandise which is in the category that we call greases and lubricants.

Q. Is there any general classification for those?

A. I have given it. Petroleum merchandise.

Q. Would the term "package goods"?

A. Synonymous to a large degree.

Q. Which of these products that you have just listed are redistributed ultimately to service stations?

A. Gasolines, thinners, solvents, kerosenes, diesel oils, and petroleum merchandise.

Q. What is the manner in which bulk products and petroleum products are redistributed from the bulk plants to the ultimate consumers?

A. I previously answered that. Repeating——

Q. (Interposing) I do not mean—your answer referred to trucks, iron barrels, and so on. Are they distributed directly to service stations from bulk plants or is there some intermediate step?

A. Directly to them.

Q. Directly to service stations?

A. Yes, sir.

Q. What service stations do you supply from bulk plants? Do you supply service stations of all types? May anyone place an order?

[fol. 2677] A. We deliver to Standard Stations, Chevron dealers, and other accounts regularly handling our merchandise.

Q. May other accounts——

A. (Interposing) —and to such other orders as may come to us.

Q. On the other accounts referred to in your previous answer, can you indicate to us the type of accounts you refer to?

A. Agricultural, industrial, commercial, and private.

Q. Are those orders placed pursuant to a contract, or——

A. (Interposing) No, sir.

Q. —or would they be spot sales?

A. Usually spot sales.

Q. May anyone come to a bulk plant and purchase—any service station come to a bulk plant and purchase its requirements of the products normally sold by you to service stations?

A. Limited. The service station not handling our gasolines would not come to us for gasoline because he would not have the designation of the gasoline that he purchased from us on his pumps. So, he could not resell it under the State law without having some designation on his pumps as having that brand of product in them. He could come and get thinners if he wanted.

Q. Are the bulk plant operators accountable to any particular person within the Marketing Department?

A. They are to a branch manager who is their supervisor.

Q. Is the branch organization you refer to the same type of organization you referred to in your earlier testimony [fol. 2678] with respect to the eleven districts?

A. No. It is a subsidiary supervisory force under the district manager.

Q. You have mentioned both branch managers and district managers. How many districts managers are there?

A. 14.

Q. 14?

A. Yes.

Q. Are these marketing districts?

A. Yes, sir.

Mr. Hall: Did you confine that question to Continental United States?

Mr. Thrody: The seven states.

A. The seven states—13 then.

Q. These are marketing districts?

A. Yes, sir, in our nomenclature.

Q. Are they synonymous with the sales districts?

A. I thought that is what you meant by marketing.

Q. Is the word marketing district and sales district synonymous, the designation—the Company's designation?

A. We do not districtize the field. We have areas for which they supervise, but it is not put out as an absolute district, and we call them a sales district, but there is no specific delineation through rigid things that pertain constantly. They can be changed as conditions may require.

Mr. Thrody: Off the record.

(Discussion off the record.)

Q. You indicate, Mr. Bussert, that these sales districts [fol. 2679] or marketing districts are broken down into various component branches?

A. Yes, sir.

Q. Is that correct?

A. Yes.

Q. Approximately how many branches are there in each sales district?

A. It varies in accordance with the size of the sales district, the supervision required.

Q. What is the largest number of branches in the 13 sales districts, approximately?

A. The answer is from memory and approximately 12.

Q. And approximately the smallest number of branches in a particular sales district?

A. 6.

Q. Now, as I understand your testimony, each of the bulk plant operators is accountable to a branch manager?

A. Yes, sir.

Q. Is the branch manager in turn accountable to some central officer or authority?

A. The district manager.

Q. For the activities of the bulk plant operations?

A. The district manager.

Q. And the district manager in turn would make reports concerning the operations of these bulk plants to whom?

A. To the centralized officials in San Francisco.

Q. In the Marketing Department?

A. In the Marketing Department.

Q. What division of them?

A. Pertaining to the subject at hand, either to the General Manager of Marketing Wholesale or Retail or to the [fol. 2680] Manager of Marketing Operations.

Q. Now, each individual bulk plant service a particular area within each branch, I suppose—is that correct?

A. Yes, sir.

Q. Is there any accepted number of accounts which each bulk plant will service or do they vary from bulk plant to bulk plant?

A. They vary.

Q. What determines the location of a bulk plant?

A. The density of business in an area that can best be served when it is sufficient to maintain bulk storage at a centralized location or an effective location.

Q. Do I understand from your testimony that the demand placed upon the individual bulk plant would govern its location or relocation?

A. Plus the effects of transportation.

Q. You mean, Mr. Bussert, that the transportation problems would also be a factor in the location of the various bulk plants, is that correct?

A. Yes, sir.

Q. Who determines the area of supply for each bulk plant—would that be the branch manager?

A. Is "supply" the word you meant or distribution?

Q. The area of distribution for each bulk plant.

A. Surveys conducted by branch manager, district manager, and home office would determine the areas to be served.

Q. Would the branch manager be empowered to readjust a zone or an area of servicing of a particular bulk plant?

[fol. 2681] A. No, sir.

Q. Under whose authority would such a change be made?

A. Joint authority, usually vested in the manager of Operations.

Q. On the adjustment of the number of accounts to be supplied by a bulk plant, would that likewise have to——

A. (Interposing) There is no adjustment made for the number of accounts.

Q. Is each bulk plant operator empowered with the authority to serve as many accounts in his geographical area as he may supply within the limits of his supply?

A. Yes.

Q. How are the orders placed with the bulk plants?

A. Mail form and personal contact.

Q. How are deliveries made? You have indicated by trucks, iron barrels and containers in your previous answer. Are those trucks owned by the bulk plant operator or by the—strike the question. Under whose authority are deliveries made from the bulk plant or by whom are deliveries made.

Mr. Hall: Now, there are two—I think you should reframe your question.

Mr. Thrody: I am sorry. Strike it.

Q. How are deliveries made from the bulk plants?

A. As previously indicated, by trucks, iron barrels and containers.

Q. With respect to the trucks, which you have referred [fol. 2682] to in your previous answer, would they be the trucks of the bulk plant or the trucks of the dealer or recipient of the merchandise?

A. By it, and the wholesale distributor plant—by the trucks owned by the wholesale distributor.

Q. On the company operated bulk plants, do they have a fleet of trucks which are part of it, which are owned by the Company and by—as a part of the bulk plant?

A. One or more as required.

Q. In your answer you have distinguished the delivery services for wholesale distributors. Do I understand your testimony to be that the trucks in those instances are owned by the individual appointed by the Company to operate the bulk plant?

A. I did—that is correct.

Q. What remuneration does the wholesale distributor receive?

A. Commission rates.

Q. Commission rates?

A. Applicable to the product delivered.

Q. Based upon, generally, on gallonage as far as gasoline and lubricating oils are concerned?

A. Yes, sir.

Q. With respect to the greases and other package goods, how would that commission——

A. (Interposing) By weight or unit.

Q. By weight or unit.

Mr. Hall: That isn't clear to me, Mr. Thrody, whether you are referring to both the operators of the Company [fol. 2683] operated plants and to wholesale distributors in your previous question.

Mr. Thrody: This question, I think the record will indicate, will refer solely to wholesale distributors who are individually appointed operators as distinguished from Company operated bulk plants.

Mr. Hall: You so understood, Mr. Bussert?

A. I did.

Mr. Thrody: Is there any other distinction between the operators of the Company operated bulk plant and the wholesale distributor bulk plant which occurs to you as being significant at this time insofar as the distribution of their products to the consumer are concerned?

A. No, sir.

Q. How are the orders from Chevron Stations placed with the bulk plant operators?

A. In the same manner as anybody else places an order.

Q. Are separate records maintained for Chevron Stations —for sales to Chevron Stations?

A. All records are maintained of the purchases individually by every person.

Q. Those records are maintained by the bulk plant operator?

A. Yes, sir.

Q. Are those records in turn transmitted either to the district office or to the central office, or copies thereof transmitted in such a manner?

A. Yes, sir.

Q. Which, copies or the originals?

[fol. 2684] A. Copies.

Q. To whom are they transmitted?

A. To the Company accounting officers for accounting purposes.

Q. In San Francisco?

A. No, in the district.

Q. In the district?

A. Yes.

Q. Are such records or compilations from such records in turn forwarded to San Francisco?

A. Summarizations of the records are transmitted.

Q. Which would indicate volumes for separate stations?

A. Yes, sir.

Q. Does the Operations Division or, to your knowledge, the Marketing Department negotiate the lease agreements and Contract agreements with Chevron Stations?

A. Operations do not; Marketing, Wholesale, Retail, does.

Q. Marketing, Retail Department, does?

A. Yes.

Q. In negotiating a new Chevron contract or lease for a new Chevron station, does the retail branch confer with the Operations Division?

A. No, sir.

Q. That is made solely upon their own volition?

A. Yes, sir.

Q. What then is the relationship between the Chevron station and the bulk plant operator?

A. That of a customer.

Q. Are you acquainted with the types of agreements [fol. 2685] signed by the Chevron operators?

A. I am not.

Q. Do the Chevron operators look to the bulk plant operators for ready source of supply?

A. They do.

Q. Who determines whether the bulk plant operators have a ready source of supply?

A. Distribution clerk.

Q. When the supply in a bulk plant becomes dangerously low, what steps would be taken or are taken to correct such a situation?

A. Stocks are automatically—bulk stocks are automatically kept up to an operating level by the Distribution Department.

Q. Could you describe what you mean by an operating level?

A. To the best of our ability, not less than half a tankful is maintained at any time.

Q. Are orders for replenishment from the bulk plants placed by the operators themselves?

A. They are.

Q. Orders are received by them in response to their specific request for——

A. (Interposing) Yes,——

Mr. Hall: Just a minute; let the witness answer.

A. —They are advices as to the amount of product on hand. They are not orders. They are advices to the Distribution Department of the amount of stock that they have on hand, and the Distribution Department noting that automatically replaces the supply to keep it up.

Q. When are orders made? Are they made on a regular [fol. 2686] schedule?

A. Advice is sent once a week.

Q. On any particular day in the week?

A. It varies in certain sales districts so as to take advantage of load distribution at central supply points and make distribution.

Q. And then, as I understand your testimony, after the advice is received, then the orders—strike that. To whom are the advices sent by the individual bulk plant operator?

A. The centralized distribution offices.

Q. What is the relationship of the centralized distribution offices to the districts and branches you have previously referred to?

A. Solely for the matter of maintaining supply.

Q. Then actually the operator, the bulk operator merely advises of the supply on hand and based upon such information the merchandise is sent to him?

A. Yes, sir.

Q. Would you say that applies to all types of products which ultimately are used in service stations of the list you referred to—petroleum products?

A. Yes.

Q. In your previous testimony you referred to the fact that gasoline, kerosenes, thinners, and greases were ultimately used by service stations?

A. Yes.

Q. Then the supply of each of those products as maintained by the bulk plant operators is handled in similar [fol. 2687] manner with the use of advices?

A. Yes. That is, the supplies are maintained by means of advices to the Distribution Department of his stock on hand and his requirements.

Q. Now, are the requests—the orders of all Chevron stations handled in the same manner?

A. Identical.

Q. To your knowledge are there any Chevron Stations who have not signed formal agreements with the Company?

A. I have no knowledge of that.

Q. Are you acquainted with the bulk plant operations in the State of Utah and in the southeastern portion of the State of Idaho?

A. To a limited degree.

Q. Are the operations of the bulk plants in those areas peculiar in any way insofar as redistribution of products generally is concerned?

A. Not to my knowledge any different from any other bulk plant.

Q. Are you acquainted with the operations of the bulk plant operators in the eastern portion of the State of Arizona?

A. To the same degree that I am with all others.

Q. Is there anything peculiar insofar as the redistribution operations——

A. (Interposing) Not to my knowledge.

Q. —in that portion or in that area? With respect to the first area I have mentioned, in the State of Utah, and in the southwestern portion of Idaho, is there a ready source of supply for gasoline for the bulk plants?

A. Yes.

[fol. 2688] Mr. Thrody: That is all.

(Discussion off the record.)

Mr. Thrody:

Q. Mr. Bussert, are you acquainted with the packaging operations performed at Point Wells in the State of Washington?

A. I am.

Q. Will you briefly describe the products which are packaged at that operation?

A. Any product handled in bulk at that point will upon order be packaged into iron barrels.

Q. What is the size of iron barrels you refer to?

A. Approximately 53 gallons.

Q. Is there any packaging performed at that point for smaller goods; specifically, the RPM lubricating oil in quart cans?

A. There is not.

Q. Are there any other points, other than the Richmond packaging plant, which packages RPM in quart cans?

A. There are no points under the supervision of Marketing Operations Department that packages RPM in other than five gallon cans or iron barrels.

Q. Other than Richmond?

A. I specifically do not know the conditions at El Segundo. They may package them down there. You limit to Richmond, and I didn't know El Segundo.

Mr. Thrody: That is all.

Cross-examination.

Mr. Hall:

Q. It is a fact, is it not, Mr. Bussert, that there are very few bulk plants located outside of California but near [fol. 2689] the border of California that make deliveries inside of California?

A. Yes, sir.

Q. And those bulk plants are located at Cave Junction, Oregon, Lakeview, Oregon, Reno, Nevada, Minden, Nevada, Tonopah, Nevada, Parker, Arizona, and Yuma, Arizona?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. What would be the proportion of the distribution from those seven bulk plants into California compared with the total distribution by the Marketing Department in California?

A. Practically infinitesimal. I would say a very small fraction of one per cent.

Q. It is true, is it not, that certain bulk plants located in California but near the borders of the State distribute products to small areas outside of California in other states?

A. Yes, sir.

Q. And those bulk plants are located at Crescent City, California, Cedarville, California, Litchfield, California, Tahoe City, California, Tallac, California, Laws, Cali-

fornia, Shoshone, California, and Blythe, California; is that correct?

A. Yes, sir.

Q. What would be the proportion of products distributed from those eight bulk plants outside of California compared with the total distribution of all bulk plants in California?

A. Likewise I would say that is an exceptionally small amount.

[fol. 2690] Q. Would you say that likewise was a fraction of one per cent?

A. I would. This is not from specific study, but I know as a fact that it is a very small portion of one per cent, or, of a per cent.

Q. Well, you would say it is then a small fraction of one per cent, is that your answer?

A. Yes.

Q. You were asked by Mr. Thrody if the gasoline was furnished to the bulk plants, and I believe he was referring to the wholesale distributor plants, on consignment, and your answer was that, "the title remained in the Company"; you recall that?

A. Yes, sir.

Q. Well, now, it is correct that the title remains in the Company, is it not?

A. Yes, sir.

Q. But is that not characteristic of a sale on consignment that the title to the product remains in the consignor anyway?

A. I think it is.

Mr. Hall: That is all.

Mr. Thrody: I would like permission to ask two questions on the subject you brought out.

Mr. Hall: Oh, sure.

Redirect examination.

Mr. Thrody:

Q. Mr. Bussert, is it not a fact that administratively you are set up to redistribute gasoline according to districts and branches?

[fol. 2691] Mr. Hall: I think that has already been asked and answered, Mr. Thrody, in his previous answer as indicated.

Mr. Thrody:

Q. Is that not your testimony?

A. Distribution is effected to keep all plants supplied with products. Administratively, in districts, as far as being able to designate where it went.

Q. My question is on your administrative setup, your overall organization pattern—it is based upon districts and branches within districts, is that correct?

A. Yes, sir, that is correct.

Q. And those districts in many instances would overlap state lines, is that correct?

A. Yes.

Q. Then in your distribution of these products from bulk plants, you are primarily concerned with the districts rather than state sales areas, is that correct?

A. The question is a little confusing to me.

Q. The sales districts you have referred to, in many instances will overlap state lines, is that correct?

A. In some instances.

Q. Do the sales districts covering the State of California overlap state lines?

A. Slightly.

Q. Do you know the volume of gasoline and other bulk goods handled by the bulk plant at Reno?

A. I do not.

Q. Is it a large bulk plant or a small bulk plant?

[fol. 2692] A. Medium size—mediumly small.

Q. Approximately what size?

A. Size being indicated by what, the amount of bulk storage they have there?

Q. Yes, capacity.

A. Relatively small.

Q. Approximatey what would it be?

A. Probably of 1600 barrels there.

Q. What is the approximate capacity at Minden?

A. Probably 1200 or 800 barrels.

Q. At Parker?

A. Let's see, they're 800 or 1200 barrels.

Q. And the other four bulk plants that ship into California?

A. Relatively—approximately the same size.

Q. Which was—approximately?

A. 1200 to 1600 barrels.

Q. In your testimony that this—the combined distribution of the seven bulk plants located along the borders, in Nevada, which ship into California——

Mr. Hall: Wait a minute; two are in Oregon, three in Nevada, and two in Arizona.

Mr. Thrody: —the eight bulk plants located outside the State of California which ship into the State of California, is your testimony that the amount or the volume is infinitesimally small?

Mr. Hall: Well—just a minute, now—all right.

[fol. 2693] Mr. Thrody: I am just interested with respect to what——

A. Yes.

Q. You mean "small" as compared to what?

Mr. Hall: Just a minute; that has been asked and answered because he has compared that volume with the entire volume distributed in California.

Mr. Thrody: In California?

A. Yes.

Mr. Hall: From both inside California and outside California.

Mr. Thrody:

Q. Now, with respect to your testimony on the operations of the bulk plant at Crescent, can you give us an approximation of the size——

Mr. Hall: That was Crescent City.

Mr. Thrody: Yes, Crescent City—the size of that bulk plant?

A. Either 1200 or 1600 barrels.

Q. And Cedarville?

A. Either 800 or 1200 barrels.

Q. Blythe?

A. I think 1200 barrels.

Q. Tallac?

A. Either 800 or 1200 barrels.

Q. Laws?

A. I think 1200 barrels there.

Q. And likewise when you say this was small you are referring to a comparison with the total sales within the State of California?

A. Yes, sir.

Mr. Hall: Well, now, wait a minute. My question related to total distribution.

Mr. Thrody: I am sorry.

[fol. 2694] Mr. Hall: Total distribution from bulk plants inside of California. You so understood?

A. Yes.

Mr. Thrody: I am sorry.

A. Having in mind you asked the same question.

Mr. Thrody: I am sorry. May the record read as compared with the total distribution within the State of California from bulk plants located within the state of California, is that correct?

A. Yes.

Mr. Thrody: That is all.

Mr. Hall: That is all.

L. M. Bussert.

[fol. 2695] Harry T. Hays, a witness called on behalf of the plaintiffs, being first duly cautioned and sworn by the Notary Public to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct examination.

Mr. Sommerville:

Q. Will you state your name for the record?

A. Harry T. Hays.

Q. What is your address, please?

A. My home address or——?

Q. Your business address?

A. 225 Bush Street, San Francisco.

Q. What is your present position?

A. Manager of Sales Equipment Division, Marketing Department, Standard Oil.

Mr. Hall: That is Standard Oil Company of California?

A. Of California.

Mr. Sommerville:

Q. How long have you held that position, Mr. Hays?

A. It will be three years in July.

Q. Have you had any previous experience in the Standard Oil organization, the Marketing Department, prior to that?

A. Thirty-two years.

Q. Now, with respect to the Sales and Equipment Division of the Marketing Department, what are its functions?

A. The function of the Sales Equipment Division is to pass on operating equipment used in the operations of the wholesale and Retail Departments of the Company, as to its [fol. 2696] value. In other words, to keep up with all of the new equipment coming on the market.

Q. By equipment, what do you mean?

A. Operating equipment, machinery, pumps, compressors; all of those, in addition to the operation of so-call accessory warehouses.

Q. What are your duties in connection with that?

A. The procurement, warehousing, and distribution.

Q. Does the scope of your duties include supervision over all of the accessory warehouses?

A. Functional supervision.

Q. You are familiar with the operations generally of all of the accessory warehouses?

A. Yes, sir.

Q. Mr. Hays, referring to what has been marked "Plaintiff's Exhibit C for Identification", can you tell us whether this sheet was prepared under your direction by you?

A. It was.

Q. Does it represent an accurate account of the location of the accessory warehouses?

A. It does.

Q. That includes all of the warehouses under the jurisdiction of Standard Oil Company, Standard Stations, Inc.?

Mr. Hall: That is all the accessory warehouses.

A. This is accessory warehouses only.

Mr. Sommerville: Yes.

Mr. Hall: Don't you want to ask him if it accurately de-

scribes the areas as served by each of the accessory warehouses?

[fol. 2697] Mr. Sommerville: Yes.

Q. Does this accurately describe the areas served by each of the warehouses?

A. Yes.

Q. This list?

A. Yes, it does.

Q. Coming now to the staff of your Sales and Equipment Division, how many employees are in charge of the warehouse operations—are employed in the operations?

A. In the operation of the warehouses?

Q. Yes.

A. Not including my office?

Q. Not including your office.

A. Actually in the warehouses?

Q. Yes.

A. As of our last payroll, I believe it was 72.

Q. 72?

A. Directly.

Q. Are those employees centrally located here in San Francisco?

A. No.

Mr. Hall: Didn't he say it was 72 exclusive of the central office location?

A. Exclusive of my office.

(Discussion off the record.)

Mr. Sommerville:

Q. To what extent are Standard Oil of California and Standard Stations, Inc., engaged in the sale and distribution of automotive accessories?

Mr. Hall: Well, now, I want to reserve an exception with respect to automotive accessories, the objection to testimony with reference to automotive accessories being that such [fol. 2698] testimony is incompetent, irrelevant, and immaterial. May it be deemed, Mr. Sommerville, that that exception and objection shall stand to all questions that you may put relating to automotive accessories as distinguished from tires, tubes, batteries? It will be so stipulated?

Mr. Sommerville: It will be so stipulated. Would you like the question read back?

A. Yes.

(The record was read.)

A. They handle the same line of accessories. In other words, the Standard Oil dealer has remarketed through the dealer the same line that is marketed through the Standard Stations.

Q. Is there a separate organization to handle the marketing of Standard Stations, Inc., than the organization for Standard Oil Company of California?

Mr. Hall: Just a minute, now; with respect to tires, tubes, and batteries, and accessories?

Mr. Sommerville: Yes.

Mr. Hall: The question is not intelligible to me. Maybe it is to the witness.

Mr. Sommerville: Let me reframe my question.

Q. Does Standard Oil Company of California supply Chevron Stations with tires, tubes and batteries?

A. Yes.

Q. Does Standard Oil Company of California act as a [fol. 2699] distributor of automotive accessories to Chevron dealers?

A. It does.

Q. Does Standard Oil Company of California act as a distributor of tires, tubes and batteries to Standard Stations, Inc.?

A. From our accessory warehouses, yes.

Q. Does Standard Oil Company of California act as a distributor of automotive accessories to Standard Stations, Inc.?

A. It does.

Q. Does the Sales and Equipment Division of Standard Oil Company of California maintain an organization with respect to Standard Stations, Inc., and to Standard Oil Company of California?

Mr. Hall: Well, now, just a minute; that is not intelligible. Read the question, please.

Mr. Sommerville: Let's reframe that.

Q. On sales of automotive accessories, that is, inclusive of tires, tubes, batteries, and other accessories, is there a sepa-

rate organization handling that separate from the Standard Oil Company of California?

A. No.

Q. Sales to Standard Stations, Inc., then would be under your jurisdiction?

A. That is right.

Q. And the staff to which you had testified——

Mr. Hall: Just a minute; may I have the last question read?

(The record was read.)

Mr. Sommerville:

Q. Does Standard Oil Company of California sell to all [fol. 2700] types of Chevron dealers irrespective of the—I will reframe that. Does Standard Oil Company of California sell the full line of accessories, including tires, tubes, batteries, to Chevron operators irrespective of the type of contract which they have with Standard Oil Company?

A. I am not in a position to answer that.

Q. Can you say——

Mr. Hall: Off the record.

(Discussion off the record.)

Mr. Sommerville:

Q. Is it your understanding that all Chevron dealers to whom you distribute automotive accessories are under TBA contract?

A. That is correct.

Q. What is meant by TBA contract?

Mr. Hall: Well, now—just a minute. That calls for a conclusion of the witness and calls for that which is not the best evidence. It is objected to as irrelevant, incompetent, and immaterial. The contract speaks for itself. The Government has contracts, forms of contracts, and also forms of TBA contract.

Mr. Sommerville:

Q. Under the TBA contracts you supply Chevron operators with accessories in addition to tires, tubes and batteries, do you not?

A. Yes, sir.

Q. Under the sales arrangements made with the Chevron dealers, is it true that volume—discounts are—discounts for volume are granted?

Mr. Hall: Well, now, discount for volume of what?

[fol. 2701] Mr. Sommerville: Of automotive accessories.

A. May I clarify that? My work, my department is to distribute on orders from a dealer when authorized by the Marketing Sales Department. I am not familiar with the agreements between the Sales Department and the dealers.

Q. Mr. Hays, how are orders placed by Chevron operators on accessory warehouses?

A. They have a form 629—I think it is—two forms, one for tires, tubes and batteries, and another form for so-call automotive accessories—that is mailed to the accessory warehouse within the territory served, and the shipment is made from that order directly to the dealer.

Q. Is the procedure the same with respect to orders originating from Standard Stations, Inc?

A. It is.

Q. How is the merchandise sent to the dealers, Chevron dealers?

A. (No response.)

Q. That is, method of transportation. How are the orders billed?

A. The orders, when they are received, they are shipped whichever is the fastest and most economical method, all through common carrier.

Q. How is the billing done for such merchandise purchaser?

A. The warehouse receiving the order makes out in turn the 800A. That is a billing invoice.

Q. Are any sales of automotive accessories made on consignment to Chevron operators?

Mr. Hall: Are you distinguishing between tires, tubes [fol. 2702] and batteries on the one hand, and accessories on the other?

Mr. Sommerville: Off the record.

(Discussion off the record.)

Q. Are tires and tubes sold to Chevron operators or are they distributed on consignment?

A. On consignment.

Q. Are batteries distributed to Chevron operators on consignment?

A. On consignment.

Q. With respect to tires, tubes and batteries, has that policy of consignment been in effect for a period of time, or——

A. (Interposing:) It was in effect prior to the war, and at the time that the manufacturer of those products was restricted consignment was eliminated because we did not have anything to put out on consignment. We were operating on a very—what we called an allocation, so, we had to distribute the best we could, and the dealer bought them on his regular purchases.

Q. Are automotive accessories, other than tires, tubes, and batteries, distributed to Chevron operators on consignment?

A. No.

Q. With respect to tires, and tubes, sold on consignment to the Chevron dealers, are shipments sent without specific orders from the dealers?

A. No.

Q. In every event then an order must originate from the Chevron dealers?

A. That is correct.

Q. There is no policy with respect to keeping a minimum stock on hand in Chevron stations?

A. A minimum stock?

[fol. 2703] Q. Yes. Of tires and tubes.

A. Yes. When the dealer sells, he is supposed to replace his consignment, place an order for replacement of the consigned stock which he has sold.

Q. Is that true with respect to the batteries also?

A. Yes.

Q. Referring now to the eight accessory warehouses listed in Exhibit C, are these warehouses utilized for distribution of products other than automotive accessories?

A. There are only two which—not—no—let me correct that. It is only automotive accessories. I was thinking you were referring to petroleum products or something of that nature.

Q. What is the arrangement of the distribution covered by each warehouse?

Mr. Hall: May I have that read, please?

(The record was read.)

Mr. Sommerville: I think the exhibit covers that. I would like to go on to another question.

Mr. Hall: You withdraw the question?

Mr. Sommerville: I withdraw the question.

Q. What is the nature of the inventories of tires and tubes in each of these warehouses?

Mr. Hall: Well, now that isn't—I just object to that as unintelligible and too vague to call for any definite answer.

[fol. 2704] Mr. Sommerville:

Q. Mr. Hays, is there not a fixed policy to keep certain stocks of tires and tubes on hand in accessory warehouses?

A. Yes.

Q. What is that policy?

A. Well, I would say the same as any other business, when your stock is depleted you replace it. You maintain a given stock.

Q. How many days supply of tires, tubes, are normally kept on hand?

A. That depends on our supply. We are given—we order monthly and maintain our stocks.

Q. During the period of wartime shortages tires and tubes had been moving in and out of the warehouse?

A. In one door and out the other.

Q. What is your policy with respect to inventories of batteries?

Mr. Hall: Policy with respect to what?

Mr. Sommerville: To inventories or to supplies which will be kept on hand in warehouses.

A. Well, the batteries is something that cannot be stored for any length of time, so we try to keep in one month's supply mostly.

Q. Is there any Company policy for keeping on hand any minimum supplies of automotive accessories other than tires, tubes and batteries?

A. We endeavor to maintain not to exceed a three months stock.

Mr. Hall: You meant warehouses, Counsel?.

Mr. Sommerville: That is correct, at the warehouses.

[fol. 2705] Q. Who determines the size of the supplies that are kept on hand?

Mr. Hall: At the warehouses?

Mr. Sommerville: At the warehouses.

A. From the projected marketing movement.

Q. Is the determination of the stock of accessories determined by each warehouse manager or by a centralized authority?

A. That varies. Certain things are ordered from my office here.

Q. What are those things?

A. At the present time it is tires and tubes and batteries and a few accessory items which are, you might say, on quota.

Q. What are those items?

A. Well, there is tires and tubes and batteries; seasonal items such as antifreeze, tire chains, car heaters and coolers. Well, those are the principal things. I couldn't enumerate them all here, but there are probably not over fifteen to twenty items.

Q. With respect to automotive accessories other than tires, tubes, and batteries, is this merchandise retained in the original packages received from suppliers at the warehouses?

A. Well, some we break the packages and place in bins, because it's shipped in broken packages, less than full packages. Everything else is retained in the full package, where a full package can be shipped.

Q. What are some items that might be placed in bins?

A. Well, we have some, let's say, miniature lamps, spark [fol. 2706] plugs, battery cables, small accessories.

Q. How are tires received in the accessory warehouses?

A. Either through—mostly through railway carload; some points highway truck transportation.

Q. How are batteries received in the accessory warehouses?

A. The same.

Q. How are tires stocked in the accessory warehouses?

Mr. Hall: Just a minute; what do you mean by stocked?

Mr. Sommerville: I was going to add—that is, are they

kept on sidings in the railroad tracks, are they actually placed in warehouses, or are they immediately moved out to the——

A. (Interposing:) They are immediately unloaded from the cars when they are received and are stored in the warehouses.

Q. With respect to tires, would the movement out of the warehouse be immedate after receiving a shipment?

Mr. Hall: That question is not clear. I don't know what you mean by that. I object to it; it is unintelligible.

Mr. Sommerville: I will withdraw that.

Q. What is average turnover of those tires received in carload lots?

Mr. Hall: What do you mean by turnover?

Mr. Sommerville:

Q. After a carload of tires is received at an accessory warehouse, how long is it before that carload lot moves out of the warehouse to fulfill the orders of your dealers?

Mr. Hall: Now you are referring to tires and tubes?

[fol. 2707] Mr. Sommerville: Yes.

A. Well, up until the last few months they had gone out probably within a week because we had been on allocation and we hadn't been able to procure tires enough to meet the demand, and so they had gone right out.

Q. Has there been a similar situation with respect to batteries?

A. The same, yes.

Q. Has there been any analogous situation with respect to any other auomotive accessories?

A. Yes.

Q. Can you name some of the principal items of that situation?

A. The principal thing—lamps, fuses, battery cables, fan belts—many of those things which were on allocation all during the war, and they were all back ordered and shipped immediately as they were received.

Q. Frequent delays then have been encountered in fulfilling orders on all of these items?

A. Oh, yes.

Q. Does Standard Oil Company of California, own and operate each of these warehouses?

A. Yes.

Q. And the personnel employed in each of these warehouses is under the supervision of the Sales and Equipment Division of——

A. (Interposing) No. I said my function was directing it, but it comes under the location organizations. For instance, Los Angeles, the actual operation is directed [fol. 2708] by our manager in Los Angeles, and different places.

Q. He would be an employee of Standard Oil Company of California?

A. Yes.

Q. And the warehouse employees would be employees of Standard Oil Company of California?

A. Yes, sir.

Q. In ordering supplies of tires and tubes for these warehouses, am I correct in my understanding that you are responsible for placing orders on the Atlas Supply Company or manufacturers?

A. That is right.

Mr. Hall: Wait a minute—"Atlas Supply Company or manufacturers"?

A. On Atlas Supply Company.

Mr. Hall: Then as I understand it, the witness has answered your question that with respect to Atlas Supply Company and not with respect to manufacturers.

Mr. Sommerville: That is right.

Q. Mr. Hays, who decides on the type or the amount of merchandise to be stocked in each of these warehouses?

A. That is decided by a committee, of which I am a member, together with the merchandising departments.

Q. By "merchandising departments"——

A. (Interposing) Those responsible for the actual selling.

Q. The warehousing manager in each of these districts, [fol. 2709] here, would he be a member of that committee?

A. No.

Q. What are the various brands of merchandise stocked in the warehouses, accessory warehouses?

Mr. Hall: You are calling for the brands and not for the description of the merchandise itself, is that correct?

Mr. Sommerville: That is right.

A. Mostly Atlas, although the merchandise which we procure through Atlas, it comes under its own brand. For instance, head lamps, spark plugs.

Q. Do accessory warehouses handle other than Atlas tires and tubes?

A. No.

Q. Do accessory warehouses handle other than Atlas batteries?

A. Not at the present.

Q. Do accessory warehouses handle other than Atlas fan belts?

A. We have some which we were unable to get from Atlas during the restricted period and we bought from other sources, yes.

Q. Whenever supplies are available from Atlas Supply Company would other brands be stocked?

A. Not of the same merchandise.

Q. How is the merchandise received into the warehouses?

Mr. Hall: The question isn't——

Mr. Sommerville: (Interposing:) Well, let's put it this way.

Q. Do shipments of tires and tubes come directly from [fol. 2710] the manufacturer?

A. They are shipped directly from the manufacturer, yes.

Q. Do shipments of batteries come directly from the manufacturer?

A. They do.

Q. Do shipments of the principal other items of automotive accessories come directly from the manufacturers?

A. From the manufacturer.

Q. Are there ever interwarehouse shipments made?

A. May I ask, do you mean between the manufacturer and our warehouses?

Q. No, I mean——

Mr. Hall: He means, from one accessory warehouse to another accessory warehouse.

A. Oh, yes. Adjustment of stocks at times.

Mr. Sommerville: What determines the necessity for interwarehouse transfer?

A. Well, it may be that they—one fellow would over-estimate their requirements and another under-estimate it, and it would be just balancing our stock. They would be running short and one would take from this warehouse over to another district.

Q. Are orders of the warehouses for supplies of Atlas tires placed directly with the manufacturers of those tires or through Atlas Supply Company?

A. Through Atlas Supply Company.

Q. Is that true with respect to batteries?

A. It is.

[fol. 2711] Q. Is that true with respect to the principal other items of automobile accessories?

A. That is right.

Mr. Hall: You meant, of course, the other accessories that are procured through Atlas? He has testified that some of the accessories, other than tires, tubes and batteries, came from other manufacturers than Atlas.

Mr. Sommerville: That is my understanding.

Q. Have manufacturers of accessories, automotive accessories, negotiated directly with you or with anyone in your division concerning distribution through your warehouses?

A. Yes. We have—there are manufacturers calling on us to interest us in their lines and things like that.

Q. Have you accepted their lines in some instances?

A. We have.

Q. Have you accepted their lines, the lines of any manufacturers, covering accessories that might be supplied by Atlas?

A. They may be a similar line but it isn't identically the same product.

Q. Have you required manufacturers of any automotive accessories to make arrangements for distributing their product through your warehouses under the Atlas brands?

Mr. Hall: May I have that question read, please?

(The record was read.)

A. Well, I have to answer that this way. We naturally wish to feature the Atlas brand, and, for instance, Champion

Spark Plug are now placing their plug in an Atlas trade [fol. 2712] mark carton.

Q. Why do you seek to market under the Atlas brand?

Mr. Hall: That is objected to as calling for the conclusion of the witness, and incompetent, irrelevant, and immaterial.

Mr. Sommerville: The witness stated that naturally they wished to feature the Atlas brand.

Mr. Hall: You are calling for the conclusion of the witness nevertheless. The objection is also predicated upon the thought that it is quite immaterial as to their reasons. The question is what they do, not why they do it.

Mr. Sommerville:

Q. Do you distribute automotive accessories under the Atlas brand? Now, I am referring to accessories other than tires, tubes and batteries.—pursuant to any agreement with Atlas Supply Company?

A. Oh, yes. Not under Atlas brand.

Mr. Hall: What was the answer? Did I get that right? Would you read the question back, Mr. Reporter?

(The record was read.)

A. It would be "no" then, because we are not in a position to market anything under Atlas brand that doesn't come from Atlas. That is Atlas' trade mark.

Mr. Sommerville: Well, what I mean to say is that do——

Mr. Hall: Why don't you ask him if he has a contract with Atlas?

Mr. Sommerville:

Q. You have a contract with Atlas Supply Company [fol. 2713] covering automotive accessories?

Mr. Hall: Not "covering" because if there is a contract the contract speaks for itself. Now, as a part of your demand for production under Rule 34 in this case you have requested, as I recall it, the Atlas contract. That is going to be furnished to you. Now, the contract speaks for itself. So don't ask this witness as to conclusions as to what the contract contains or his interpretation of the contract.

Mr. Sommerville: I will be satisfied with another question here.

Q. Are there any conferences held with representatives of Atlas Supply Company concerning distribution of automotive accessories other than tires, tubes and batteries under the Atlas brand name?

Mr. Hall: Would you read that question, please?

(The record was read.)

Mr. Hall: Are you inquiring as to the practice, Mr. Sommerville?

Mr. Sommerville: Yes.

A. The only thing we would consult with Atlas on, if we decided we would like to market a certain thing that is presented to us, would be to ask Atlas if they will be interested in marketing this product under their name, telling them who the people are. They would make any arrangements or anything of that nature.

Q. What is the relationship of Atlas Supply Company to [fol. 2714] Standard Oil of California?

Mr. Hall: What do you mean by "what is the relationship?"

Mr. Sommerville:

Q. Does Standard Oil Company have any ownership in the stock of Atlas Supply Company?

Mr. Hall: Is that your question?

Mr. Sommerville: Yes.

A. I only from hearsay understand that.

Mr. Hall: I don't want you to give any hearsay.

Mr. Sommerville: We don't want any hearsay. Can you state of your own knowledge?

A. To my knowledge I have never seen an agreement.

Q. Are there any officers of the Atlas Supply Company who are also officers of Standard Oil?

Mr. Hall: I have no objection if the witness knows. Do you know the answer to that question?

A. Yes. One of our officers is an officer of the Atlas Supply Company.

Mr. Sommerville: Who is that officer?

A. That is Mr. E. J. McClanahan, Vice President charge of Marketing.

Q. Are any employees of Atlas Supply Company on the payroll of Standard Oil Company within your knowledge?

A. Not to my knowledge.

Q. Do you know what position Mr. McClanahan has with Atlas?

Mr. Hall: That is objected to as incompetent, irrelevant [fol. 2715] and immaterial.

Mr. Sommerville: It shows integration between the operations, between the Atlas Supply Company and Standard Oil Company.

Mr. Hall: That is not within the pleadings.

Mr. Sommerville: May he be permitted to answer subject to objection?

Mr. Hall: Subject to objection, yes.

A. He is a director.

Mr. Sommerville:

Q. Do you know what period of time the present contract between Atlas Supply Company and Standard Oil Company of California covers?

Mr. Hall: Just a minute; the contract will speak for itself. You're calling for the terms of a contract.

Mr. Sommerville:

Q. Is Standard Oil Company of California the sole distributor for Atlas Supply Company?

Mr. Hall: That is objected to as incompetent, irrelevant, immaterial, and not within the pleadings.

Mr. Sommerville: I would like that answer subject to that objection.

Mr. Hall: I don't think you are entitled to go into that. That has no possible relation to anything which you complained of in this case.

Mr. Sommerville: I think that has a bearing upon the interstate character of the arrangement in question. It shows control from start to finish over the automotive acces- [fol. 2716] sories in question; control from the common source.

Mr. Hall: I don't think it shows any such thing. It can't

possibly show any such thing. In the second place, you haven't pleaded it.

Mr. Sommerville: It has a bearing upon the interstate commerce it pleaded it had. If Atlas Supply Company——

Mr. Thrody: And the motive.

Mr. Hall: Motive for what?

Mr. Thrody: For the whole observation in this thing.

Mr. Sommerville: If Atlas Supply Company——

Mr. Hall: Read the question to the witness. If the witness can answer, it can go in under my objection.

(The record was read.)

Mr. Hall: Subject to my objection.

A. Within our marketing territory.

Mr. Sommerville:

Q. By that you mean the seven western states, California, Washington, Oregon, Arizona, Nevada, Idaho, and Utah?

A. With the exception of Utah and Idaho, in which Atlas supplies are marketed by the Utah Oil Company.

Mr. Hall: Utah Oil Refining Company?

A. Yes, sir.

Mr. Sommerville:

Q. Mr. Hays, who manufactures Atlas tires and tubes and from what factories do you receive shipments?

Mr. Hall: Well, now, wait a minute; that question is [fol. 2717] double barrel. Why don't you spread it out?

Mr. Sommerville: O.K.

Q. Who manufactures Atlas tires and tubes?

Mr. Hall: You mean——

Mr. Sommerville: Distributed through your accessory warehouses?

A. Through our accessory warehouses—United States Rubber Company.

Q. From what factories do your accessory warehouses receive shipments?

Mr. Hall: Tires and Tubes, you mean?

Mr. Sommerville: Of tires and tubes.

A. Los Angeles.

Q. Are shipments received from any other factories of tires and tubes?

Mr. Hall: At the accessory warehouses?

Mr. Sommerville: At the accessory warehouses.

A. Only when there might be something, that they're ordered through Los Angeles but might come from some other source, through the many cities, through the other factories. That may be the case where they couldn't fill it there.

Q. Who manufactures Atlas batteries distributed through your accessory warehouses?

A. There are several: Auto-Lite, Solar and others.

Q. Where is that located?

A. Oakland. Solar, Los Angeles, and—it slipped my mind for a moment—one of the major battery companies [fol. 2718] here.

Q. Are any——

A. It just slipped my mind for a moment. It's a major company.

Q. Let me ask an additional question. Are any Atlas batteries distributed through your accessory warehouses received from the factories located outside of the State of California?

A. Only at times, which would apply the same as the factory, the local factory, and they might have to ship that which they were unable to obtain, but that is exceptional.

Q. Who manufactures Atlas spark plugs distributed through accessory warehouses?

A. Champion Spark Plug.

Q. From what factories do you receive shipments of those spark plugs?

A. They come from the eastern states. I believe it's Jersey; come from various factories—we don't know where—when we place an order where they would be shipped from. It's an eastern shipment.

Q. What manufacturer or manufacturers manufacture battery cables distributed through accessory warehouses?

A. Well, there have been several. When we place an order for Atlas, they may come from different manufacturers.

Q. Located outside of the State of California?

A. Outside the State of California, yes.

Q. What manufacturers manufacture fan belts distributed through your accessory warehouses?

A. That would be the same thing.

Q. What manufacturers produce oil filters distributed [fol. 2719] through your accessory warehouses?

A. They come from the east also. Some manufacturers are the same as—Atlas are not tied up with any one manufacturer.

Q. From what manufacturers are shipments of waxes, polishes, and other chemicals received by your accessory warehouses?

A. Various manufacturers.

Q. Located throughout the United States?

A. Throughout the United States.

Q. Is that true also of radiator caps?

A. Yes.

Q. Oil filter elements?

A. Yes.

Q. And automotive accessories we have not named specifically?

A. Yes.

Q. Do you receive Atlas tires and tubes into the accessory warehouses on consignment?

A. No.

Mr. Hall: You mean, on consignment from Atlas?

Mr. Sommerville: Yes.

Mr. Hall: Or from manufacturers?

Mr. Sommerville: No.

Q. How are orders placed on Atlas Supply Company by accessory warehouses?

A. Through a regular ordering form which we have.

Q. Does title to automotive accessories supplied by Atlas [fol. 2720] Supply Company to your accessory warehouses pass at the time shipment is made to those warehouses?

A. Passes to Standard Oil.

Q. To Standard Oil Company?

A. Yes.

Q. That you know?

A. Well, I would say it does when they are received in the warehouse, yes.

Q. Do you have any knowledge of whether or not title vests in Atlas Supply Company from the manufacturer?

Mr. Hall: That is objected to as calling for the conclusion of the witness.

Mr. Sommerville: I agree.

Q. With respect to the forms on which this merchandise is ordered, are they placed directly with Atlas?

A. With the local representative of Atlas here in San Francisco.

Q. And is a copy of that—does a copy of that form go to the central office of Standard Oil Company of California?

A. Goes to the accounting office for the billing.

Q. Are records maintained with respect to the amount of accessories, merchandise, including tires and tubes and batteries, by each Chevron station, Chevron dealer?

Mr. Hall: Will you read that, please?

(The record was read.)

Mr. Hall: You mean, inventory records?

Mr. Sommerville: No. Records of sales, purchases by [fol. 2721] Chevron dealers.

Mr. Hall: You mean, does each dealer that buys tires, tubes and batteries and accessories keep a record of what he buys?

Mr. Sommerville: Does the Company keep a record of all sales made to Chevron dealers of automotive accessories, including tires, tubes and batteries?

A. Well, yes, for billing purposes.

Q. Are records kept for the purpose of granting discounts for volume sales?

A. For volume sales, yes.

Q. Do you know what those discounts are?

A. No, I do not.

Q. Going back, Mr. Hays, you stated that at times manufacturers will approach you or other representatives of the Company concerning your distributing their automotive accessories, and you testified sometimes—that you sometimes accepted their line and that it might be a similar line to the Atlas line. Could you clarify that further? What do you mean by similar line?

A. Well, I would say this, it may be a car polish. Now, each motorist has his preference to a certain type of car polish that he might need. Car-Nu people, they have another one; and for certain types of polishing the public

wants a soft polish, or a harsh polish, or some other kind, liquid wax or hard wax, or something like that.

Q. Do you stock polishes other than Atlas polishes in accessory warehouses?

A. Yes.

[fol. 2722] Q. In those instances in which these polishes are stocked there would be some peculiar appeal to the consumer over the Atlas brand?

A. That is right.

Q. Referring now to Exhibit C for Identification, you indicated here that the San Francisco warehouse services dealers in Northwestern Nevada, also the Lakeview District in Southern Oregon. Can you state approximately the amounts that are sold to those districts outside of California?

Mr. Hall: Amounts of what over what period?

Mr. Somerville: Amounts of tires and tubes.

A. No.

Q. Accessories?

A. No.

Mr. Sommerville: I think that is all, Mr. Hays. Thank you very much.

Cross-examination.

Mr. Hall:

Q. Is it correct that substantially all the requirements of tires and tubes furnished to the eight accessory warehouses listed in Exhibit C are furnished from factories in California?

A. Yes, sir.

Q. Is it correct that substantially 100% of the batteries furnished to the accessory warehouses shown in Exhibit C are furnished from California factories?

A. Yes, sir.

Q. And I think you said that the practice, except for the war period, had been to consign tires and tubes to the [fol. 2723] dealers that took the tires and tubes from the accessory warehouses?

A. That is right.

Q. Is that correct?

A. That is right.

Q. And is the same thing true with respect to the batteries?

A. With respect to the batteries.

Q. You said that the distribution from the accessory warehouses to the dealers would be entirely by common carrier, is that right?

A. Entirely, yes, sir.

Q. And the methods of transport by the common carrier would be parcel post or Railway Express or freight, is that correct?

A. Would be either by railway freight, highway transport freight, parcel post, or American Railway Express.

Q. When the tires and tubes arrive at an accessory warehouse, are they sorted out and records made of the types and sizes?

A. Oh, yes, and checked against the shipping—bills of lading, and stacked separately by sizes.

Q. Is the same thing true with respect to batteries?

A. Yes.

Mr. Hall: That is all.

Mr. Somerville: That is all.

Harry T. Hays.

[fol. 2724] UNITED STATES OF AMERICA,
Northern District of California,
City and County of San Francisco, ss.

I hereby certify that on the 9th day of March, 1948, at 2:00 o'clock p. m., and on the 10th day of March, 1948, at 9:00 o'clock a. m., before me, Edith Goewey, a Notary Public in and for the City and County of San Francisco, State of California, at Room 1712, Standard Oil Building, 225 Bush Street, San Francisco, California, personally appeared, pursuant to stipulation between counsel for the respective parties, Francis S. Olane, L. M. Bussert, and Harry T. Hays, witnesses called on behalf of the plaintiffs herein; and W. A. Thody, Esquire, and Lawrence W. Sommerville, Esquire, Special Assistants to The Attorney General, appeared as attorneys for the plaintiffs, and Messrs. Lawler, Felix & Hall, represented by John M. Hall, Esquire, and Messrs. Pillsbury, Madison & Sutro, represented by Henry G. Hayes, Esquire, appeared as attorneys for the defendants; and the said Francis S. Olane, L. M. Bussert, and Harry T. Hays being by me first duly cautioned and sworn to testify the

whole truth, and being carefully examined, deposed and said as appears by their depositions hereto annexed.

And I further certify that the said depositions were then and there recorded stenographically by Harry A. Cannon, a competent official and disinterested shorthand reporter, appointed by me for that purpose and acting under my direction and personal supervision, and were transcribed [fol. 2725] by him; that the depositions are a true record of the testimony given by the said witnesses.

And I further certify that the exhibits hereto attached and marked for identification "Plaintiff's Exhibit A-1," "Plaintiff's Exhibit B-1," and "Plaintiff's Exhibit C," and the exhibits accompanying the depositions and marked for identification "Plaintiff's Exhibit A," and "Plaintiff's Exhibit B," are the exhibits referred to and used in connection with the depositions of said witnesses.

And I further certify that the said depositions have been retained by me for the purpose of securely sealing them in an envelope and directing the same to the Clerk of the Court as required by law.

And I further certify that I am not of counsel or attorney for either or any of the parties, nor am I interested in the event of the cause; I further certify that I am not a relative or employee of or attorney or counsel for either or any of the parties, nor a relative or employee of such attorney or counsel, nor financially interested in the action.

In Testimony Whereof, I have hereunto set my hand and official seal at the City and County of San Francisco, State of California, this 25th day of March, A. D. 1948.

Edith Goewey, Notary Public in and for the City and County of San Francisco, State of California.
(Seal.) My Commission Expires Dec. 24, 1948.

(Here follows 1 Photolithograph, side folios 2726-2726A)

Note:

Page 1754A is on next microcard.

[fol. 2727] DEFENDANTS' EXHIBIT LL

Bulk Distribution——Exhibit "A" (See Note)

Bulk Distributive Areas Supplied by California Refineries of the Standard Oil Company of California

Distributive Area No. 1 is supplied by barge, tank cars and/or tank trucks from the Richmond Refinery.

Distributive Areas No. 2 are supplied by tank cars and/or tank trucks from the Richmond Refinery.

Distributive Area No. 3 is supplied by tank cars and/or tank trucks from the Bakersfield Refinery.

Distributive Area No. 4 is supplied by tank cars and/or tank trucks from the El Segundo Refinery.

Bulk Distributive Areas Supplied from Other Refineries

Distributive Area No. 5 is supplied by tank cars and/or tank trucks from the Salt Lake City Refinery of the Utah Oil Refining Company.

Distributive Area No. 6 is supplied by tank cars and/or tank trucks from the El Paso Refinery of the Standard Oil Company of Texas.

Bulk Distributive Areas Supplied by Distribution Terminals of the Standard Oil Company of California

Distributive Area No. 7 is supplied by tank cars and/or tank trucks from San Diego. San Diego is supplied by barge from San Pedro and/or El Segundo Refinery.

Distributive Area No. 8 is supplied by tank trucks from Moss Landing. Moss Landing is supplied by tanker from Richmond Refinery.

Distributive Area No. 9 is supplied by tank trucks from Redwood City. Redwood City is supplied by barge from Richmond Refinery.

Distributive Area No. 10 is supplied by tank cars and/or tank trucks from Stockton. Stockton is supplied by barge from Richmond.

Distributive Area No. 11 is supplied by tank cars and/or tank trucks from Sacramento, San Rafael and Napa. Sacramento, San Rafael and Napa are supplied by barge from Richmond.

Distributive Area No. 12 is supplied by tank cars and/or tank trucks from Eureka. Eureka is supplied by tanker from Richmond Refinery.

Pltf's. Exh. No. A-4 for Iden.

Harry A. Cannon, Reporter.

[fol. 2728] Distributive Area No. 13 is supplied by tank cars and/or tank trucks from Coos Bay. Coos Bay is supplied by tanker from Richmond Refinery.

Distributive Area No. 14 is supplied by tank cars and/or tank trucks from Astoria. Astoria is supplied by tanker from Richmond.

Distributive Area No. 15 is supplied by tank cars and/or tank trucks from Longview. Longview is supplied by tanker from Richmond and/or El Segundo.

Distributive Area No. 16 is supplied by tank cars and/or tank trucks from Willbridge. Willbridge is supplied by tanker from Richmond and/or El Segundo.

Distributive Area No. 17 is supplied by tank trucks from The Dalles. The Dalles is supplied by barge from Willbridge. Willbridge is supplied by tanker from Richmond and/or El Segundo.

Distributive Area No. 18 is supplied by tank cars and/or tank trucks from Umatilla and Attalia. Umatilla and Attalia are supplied by barge from Willbridge. Willbridge is supplied by tanker from Richmond and/or El Segundo.

Distributive Area No. 19—supplied by tank cars and/or tank trucks from Aberdeen. Aberdeen is supplied by tanker from Richmond.

Distributive Area No. 20 is supplied by tank cars, tank trucks and/or barge from Point Wells. Point Wells is supplied by tanker from Richmond and/or El Segundo.

Distributive Area No. 21 is supplied by tank cars and/or tank trucks from Tacoma. Tacoma is supplied by barge from Point Wells. Point Wells is supplied by tanker from Richmond and/or El Segundo.

Distributive Area No. 22 is supplied by tank trucks from Olympia. Olympia is supplied by barge from Point Wells. Point Wells is supplied by tanker from Richmond and/or El Segundo.

Distributive Area No. 23 is supplied by tank cars and/or tank trucks from Bellingham. Bellingham is supplied by

barge from Point Wells. Point Wells is supplied by tanker from Richmond and/or El Segundo.

NOTE: The limits of these various Distributive Areas should not be considered fixed or final, as of any particular date, as they are shifting slightly from time to time for economic and other reasons such as changing freight rates, availability of stocks at Refineries and Distribution Terminals, etc.

[fol. 2729] Plaintiff's Exhibit A-1 for Identification

[fol. 2730] Plaintiff's Exhibit A for Identification

(Too bulky to be attached—accompanying depositions.)

(Here follows 1 photolithograph, side folio 2731)

Note:

Page 1758A is on next microcard.

[fol. 2732] DEFENDANT'S EXHIBIT NN

PACKAGE GOODS DISTRIBUTION—MAP EXHIBIT "B"
(See Note)

Package Goods Distributive Areas Supplied by California Refineries of the Standard Oil Company of California.

Distributive Area "A" is supplied by box cars and or package trucks from Richmond Refinery.

Distributive Area "B" is supplied by box cars and or package trucks from El Segundo Refinery.

Package Goods Distributive Areas Supplied by Distribution Terminals of the Standard Oil Company of California.

Distributive Area "C" is supplied by box cars and/or package trucks from Willbridge.

Distributive Area "D" is supplied by box cars, package trucks and/or barges from Point Wells.

NOTE: The limits of these various Distributive Areas should not be considered fixed or final, as of any particular date, as they are shifting slightly from time to time for economic and other reasons such as changing freight rates, availability of stocks at refineries and Distribution Terminals, etc.

Certain products in packages are only manufactured at Richmond and they are shipped in box carload quantities to Willbridge and Point Wells. Such products are then included with package goods orders which are filled at Willbridge and Point Wells, and shipments are then made to destinations in those distributive areas.

Also, those products in packages which are only manufactured at Richmond are shipped in box carload quantities to the El Segundo Refinery as well as to Marketing Plants located in the large cities such as Phoenix, Arizona, Bakersfield, Los Angeles and San Diego, California, Seattle, Spokane and Tacoma, Washington, etc.

Plff's Exh. No. B for Iden.

Harry A. Cannon, Reporter.

[fol. 2733] Plaintiff's Exhibit B for Identification.

(Too bulky to be attached—accompanying depositions.)

[fol. 2734] Plaintiff's Exhibit B-1 for Identification.

[fol. 2735] / Defendant's Exhibit OO

Location of Accessory Warehouses.

San Francisco—serves Central and Northern California; also dealers in Northwestern Nevada; also Lakeview District in Southern Oregon.

Salt Lake City—serves all of Utah, Arizona, North of Grand Canyon, Eastern and Northern Nevada and Southeastern Idaho.

Phoenix—confined to State of Arizona and Needles across Colorado River in California.

Los Angeles—Southern California and Southern Nevada.

Fresno—within State of California.

Portland—Oregon, Southern Washington and Southwestern Idaho.

Seattle—Washington only.

Spokane—Eastern Washington and Northern Idaho.

Plff's Exh. No. C for Iden.

Harry A. Cannon, Reporter.

[fols. 2736-2738] Plaintiff's Exhibit C for Identification.

DEFENDANTS' EXHIBIT [illegible]NDANTS' EXHIBIT KK

STANDARD OF CALIFORNIA

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MILES

JULY 1947

1754A

Pt. Roberts · Blaine · East Sound · Roche Harbor · Friday Harbor · Anacortes · Richardson · Concrete · Mt. Vernon · San de Fuca · Port Townsend · Stanwood · Granite Falls · Everett · Darrington · Monroe · Grotto · SEATTLE · Tacoma · Enumclaw · Cle Elum · Ellensburg · Vantage · Othello · Nachese · Yakima · Wenatchee · Ephrata · Quincy · Moses Lake · Odessa · Ritzville · Wilson Cr · Harrington · Sprague · Rosalia · Tekoa · Davenport · Wilbur · Creston · Reardon · Greenacres · Spokane · Coeur d'Alene · Kellogg · Wallace · Worley · Fairfield · Cheney · Ft. 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DEFENDANTS' EXHIBIT SS

TELEGRAM

SAN FRANCISCO. CALIF.

MARCH 24, 1948

MR. P. W. KENDRICK - LOS ANGELES

MR. C. T. FURRER - LONG BEACH

MR. C. S. LINCOLN - SAN DIEGO

MR. H. [illegible] GUENELS - PHOENIX

MR. G. C. BRIGGS - FRESNO

MR. J. S. GORDON - BAKERSFIELD

MR. H. H. HAINES - SACRAMENTO

MR. L. V. BURNS - PORTLAND

MR. [illegible] C. PASTRAS - SALT LAKE CITY

MR. S. B. [illegible]THATTEN - SEATTLE

MR. M. T. VIVIAN - SPOKANE

ADVISE BY TELEGRAM SEPARATELY NUMBER 100% COMPETITIVE ALL NUMBER

SPLIT ACCOUNTS SHOWN. AS ALL S-500-2 AND S-500-3 RECONCILE TO YOUR FIGURES.

JUST SEPARATE TOTALS FOR CAPITAL DISTRICT AND SUBURBAN TELEPHONE CO.

ADVISE IF S-500-2 AND S-500-3 RECORDS ARE CORRECT WHEN YOU HAVE BOTH

CURRENT AND PAST FIGURES FOR LAST YEAR. IF SO, WHAT YEARS.

J. C. BACHUS

FCB:cm

TIME: 3:30

DELIVERY: IMMEDIATE

AUTOVATIC: 2503

STANDARD OF CALIFORNIA

0 25 50 75 100

MILES

JULY 1947

1758A

D

C

A

B

SEATTLE

PORTLAND

SPOKANE

BOISE

SALT LAKE CITY

CARSON CITY

SACRAMENTO

SAN FRANCISCO

OAKLAND

FRESNO

BAKERSFIELD

LOS ANGELES

SAN DIEGO

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2741

1263

TELEGRAM

LA MAR 25 PM 4 04 1106 MS

F C EACHUS SF

REURTEL 3-24-48 TOTAL NUMBER 100 PERCENT COMPETITIVE ACCOUNTS THIS DISTRICT 3040. TOTAL NUMBER SPLIT ACCOUNTS 233. THESE RECORDS ARE CURRENT ONLY.

[1770 2748]

K W KENDRICK

OK

[1771 2749]

SU 3 SALT LAKE CITY MAR 25, 1948 1123AM SK

MR F C EACHUS

SF

TELEGRAM

REURTEL MARCH 24 COMPETITIVE AND SPLIT ACCOUNTS TOTAL 100 PERCENT COMPETITIVE ACCOUNTS IN DISTRICT 2003 SPLIT ACCOUNTS 7. S-500-2 AND S-500-3 RECORDS ARE CURRENT ONLY.

F C EASTMAN

SE / 14 SEATTLE MAR 25 304 P

MR F C EACHUS

SF

REURTEL MARCH 24 COMPETITIVE ACCOUNTS. IN THE ENTIRE SEATTLE DISTRICT THERE ARE 2981 100 PERCENT COMPETITIVE ACCOUNTS AND 7 SPLIT ACCOUNTS. S-500-2 AND S-500-3 RECORDS ARE APPROXIMATELY ONE YEAR OLD. WE DO NOT HAVE FIGURES BEYOND THAT TIME.

S E STRETTON RED

STANDARD OIL COMPANY OF CALIFORNIA

San Francisco, California
March 30, 1948

COMPETITIVE AND SPLIT ACCOUNTS

MR. F. C. BACHUS:

Replying to your telegram of March 24, 1948, the San Francisco District has 1671 Competitive Accounts and 14 Split Accounts as shown on our S-500-2 and S-500-3 records.

We have only current figures, records for the past years having been destroyed.

F. R. MEYER

EWP/hw

TELEGRAM

SD MAR 25 212 96 WG

FCE SF

REURTEL MARCH 24 S-500-2 AND S-500-3. WE LIST BELOW NUMBER OF 100 PER CENT AND SPLIT ACCOUNTS BY COMPANIES FOR OUR DISTRICT.

NAME OF COMPANY	100 PER CENT	SPLIT
ASSOCIATED	76	2
AERO	2	-
BEACON	18	-
CENTURY	3	1
DOUGLAS	56	1
GEN. PET.	155	-
GOLDEN EAGLE	23	1
HANCOCK	16	-
HARBOR	1	1
HERCULES	4	-
MACMILLAN	11	-
MOHAWK	3	
NATIONAL	1	-
OLYMPIC	5	1
PATHFINDER	23	-
PARAGON	6	-
PETROL	18	-
RIOGRANDE	23	2
RICHFIELD	94	-
ROTHCHILD	21	3
SEASIDE	28	1
SHELL	114	-
SIGNAL	78	4
SMILAGE	2	-
SOCAL	1	-
SUNSET	33	1
TEXACO	168	6
UNION	123	-
VELTEX	5	1
WILSHIRE	53	6
TOTAL-	1174	32

MOHAWK 3
NATIONAL 1 -
OLYMPIC 5 1
PATHFINDER 23 -
PARAGON 6 -
PETROL 18 -
RIOGRANDE 23 2
RICHFIELD 94 -
ROTHCHILD 21 3
SEASIDE 28 1
SHELL 114 -
SIGNAL 78 4
SMILAGE 2 -
SOCAL 1 -
SUNSET 33 1
TEXACO 168 6
UNION 123 -
VELTEX 5 1
WILSHIRE 53 6

S-502-2 AND 502-3 CURRENT AS OF JANUARY 7 1948. WE DO NOT HAVE THIS RECORD FOR PAST YEARS.

CSL

[1773]
[2751]

PD 2 PORTLAND MAR 26, 1948 330

MR F C EACHUS

SF

REUPTEL MARCH 25. 100 PERCENT COMPETITIVE TOTAL 3361 - SPLIT ACCOUNTS TOTAL /4/ FOUR. OUR RECORDS MADE UP DURING YEAR 1947.

E V BURNS / DNW

AM

ILLEGRAM

[2752]
[1774]

SC4 SACRAMENTO MAR 26 330

F C EACHUS SF

REURTEL MARCH 24 NUMBER COMPETITIVE ACCOUNTS. WE HAVE 1403 100 PERCENT COMPETITIVE ACCOUNTS AND 25 SPLIT ACCOUNTS THIS DISTRICT. S500-2 AND S500-3 RECORDS WERE COMPILED IN 1947 WITH SOME EXCEPTIONS WHICH WERE PREPARED THIS YEAR. WE ARE CURRENTLY REVISING THESE RECORDS BUT REVISION NOT YET COMPLETE

W H HAINES

1783

1784

WESTERN UNION

WU4 NL PD

JD OAKLAND CALIF MAR 29 1948

F C EACHUS, STANDARD OIL CO OF CALIF

WESTERN UNION

RE YOUR WIRE MARCH 24 1790 100PERCENT COMPETITIVE AND 30 SPLIT

ACCOUNTS OAKLAND DISTRICT ON S-500-2 AND S-500-3 RECORDS.

S-500-2 AND S-500-3 RECORDS ARE CURRENT ONLY

L E HUNT.

605A.

WESTERN UNION

[1775
2753]

TELEGRAM

BK MAR 26 830 1BK

FCE SF

REURTEL MARCH 24TH - COMPETITIVE ACCOUNTS. WE HAVE TOTAL OF 894 - 100% COMPETITIVE AND 19 SPLIT COMPETITIVE ACCOUNTS IN BAKERSFIEL DISTRICT. OUR S-500 -2 AND S-500 -3 RECORDS ARE CURRENT AND WE HAVE NOT RETAINED RECORDS OF PREVIOUS YEARS.

J S GORDON

FR 1 FRESNO MAR 25 905

MR F C EACHUS SF

REURTEL MARXXX 24TH, S-500 SERIES SHOW 1971 ONE HUNDRED PER CENT COMPETITIVE AND 25 SPLIT ACCOUNTS ON ALL S-500-2 AND S-500-3 RECORDS IN ALL BRANCHES. IN THIS DISTRICT, ORIGINAL 500 SERIES ARE KEPT CURRENT AT ALL TIMES THROUGH ADDITIONS IN BLUE AND DELETIONS IN RED SO THAT COMPLETE PICTURE FROM INCEPTION OF PLAN IS REFLECTED ON ORIGINAL SHEETS FOR EACH COMPANY. THIS PROCEDURE CONSIDERED PREFERABLE TO COMPILATION OF NEW SHEETS EACH YEAR.

[1776
2754]

G C BRIGGS

SP 2 SPOKANE MARCH 30 1948 950 SSG

F C EACHUS

SAN FRAN

REURTEL MARCH 24 COMPETITIVE AND SPLIT ACCOUNTS. OUR RECORDS INDICATE 2735 COMPETITIVE ACCOUNTS AND 17 SPLIT ACCOUNTS IN SPOKANE DISTRICT. THESE ARE CURRENT FIGURES. PAST YEARS FIGURES INCOMPLETE AS EXISTING S500-2 AND S500-3 HAVE BEEN REVISED CURRENTLY TO REFLECT CHANGING CONDITIONS RATHER THAN MAKE COMPLETE NEW SHEETS FOR EACH YEAR. TOTAL RESALE OUTLETS THIS DISTRICT 599 SOCO 2752 COMPETITIVE AND SPLIT ACCOUNTS.

R T VIVIAN

TELEGRAM

2745

A TBMJJ

LB MAR 25 1200 72 WS

F C EACHUS SF

REURTEL MARCH 24 SUMMARY OF S-500-2 AND S-500-3.

100 PER CENT COMPETITIVE - S-500-2- 3863

SPLIT ACCOUNTS 161

ONLY CURRENT S-500-2 AND S-500-3 ARE AVAILABLE

C T FURRER

TELEGRAM

PHX MAR 25 240 102 WS

F C EACHUS SF

REURTEL 100 PERCENT COMPETITIVE 1291 SPLIT NONE RECORDS CURRE

ONLY NONE FOR

PAST YEARS

HEG

Competitive & Split Accounts

	.00%	Split
L. F.	1671	14
Oak	1790	30
L. T.	3840	233
L. B	3863	161
L. D	1174	32
Pha	.291	-
Ecl	894	19
Fee	.951	28
Sac	1408	25
Fish	336	4
L. L. C	2003	1
Fire	298	1
Spok	2735	19
	28962	577

DEFENDANTS' EXHIBIT TT

EXHIBIT "A"



EXHIBIT "B"

CHEVRON

2757

EXHIBIT "C"



EXHIBIT "D"



EXHIBIT "E"

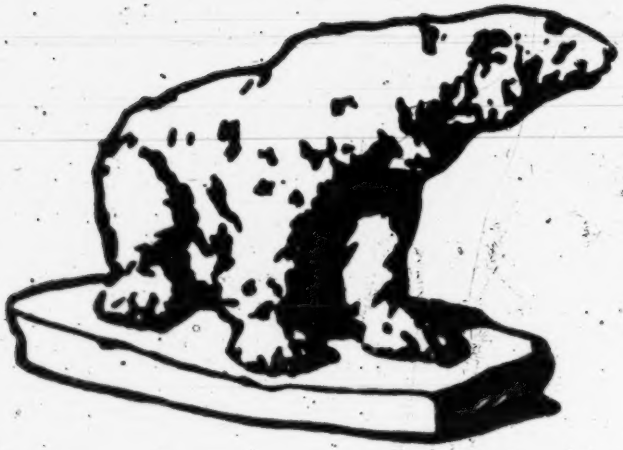


EXHIBIT "I"

ZEROLENE

EXHIBIT "G"

ZEROLENE



[fol. 2763]

DEFENDANT EXHIBIT NO. UU

List of Competitive Service Station Construction Activity
Showing Work In Progress as of July 15, 1947

Long Beach District

Company	Location	Approx. Date Construction Started	Type Station—Remarks
Compton Branch			
Associated	NW Century & Inglewood, Inglewood	6/20/47	2 Pump Blocks
Associated	SE 98th & Normandie, Los Angeles	6/25/47	1 Pump Block
Douglas	Rosecrans btwn. Avalon & San Pedro, L. A.	6/20/47	9 Pumps
Exeter	SE Compton & Butler, Compton	6/10/47	1 Pump Block
P. D. Q.	NE Normandie & Redondo, Gardena	7/2/47	1 Pump Block
Richfield	SE Western & Market, Gardena	7/5/47	1 Pump Block
Seaside	NE 139th & Western, Los Angeles	7/10/47	1 Pump Block
Time	NW Imperial & Wright, Lynwood	7/2/47	2 Pump Blocks—In rear of our site 293-CDA on Atlantic
Union	SW Century & Western, Los Angeles	6/15/47	2 Pump Blocks
Union	NE Forham & Long Beach, Lynwood	7/5/47	1 Pump Block
Wilshire	NE 121st & Western, Los Angeles	6/15/47	1 Pump Block
(Unknown)	Imperial btwn. Crenshaw & Western, L. A.	6/10/47	1 Pump Block
El Segundo Branch			
General Petroleum	NW 167th & Prairie, Gardena	5/1/47	1 Pump Block
Operators	NW Grand & Sepulveda, El Segundo	7/7/47	1 Pump Block
P. D. Q.	SE San Vicente & Barrington, W. Los Angeles	5/18/47	1 Pump Block
Richfield	SW Jefferson & Sepulveda, Los Angeles	7/15/47	2 Pump Blocks
Signal	SW Will Rogers & Sepulveda, Los Angeles	7/15/47	Sign Up Notifying Construction
Signal	NW Manhattan Beach Blvd. & Hawthorne, L. A. County	6/15/47	1 Pump Block
Union	NE Sepulveda & Diamond, Redondo Beach	7/8/48	1 Pump Block
Long Beach Branch			
Union	NE Willow & Santa Fe, Long Beach	7/1/47	2 Pump Blocks

[fol. 2764]

DEFENDANT EXHIBIT No. UU—Continued

List of Competitive Service Station Construction Activity
Showing Work In Progress as of July 15, 1947

Long Beach District

Company	Location	Approx. Date Construction Started	Type Station—Remarks
Pomona Branch			
Texas	SW 5th & Gibb, Pomona	6/10/47	1 Pump Block
Wilshire	A St. btwn. Allyn & Campas, Ontario	6/1/47	1 Pump Block—95% Completed
Riverside Branch			
Union	NW 8th & Eucalyptus, Riverside	6/1/47	Probably 1 Pump Block
San Bernardino Branch			
Associated	NE Baseline & Tippecanoe, San Bdno.	3/1/46	2 Pump Blocks Completed 7/15/47
Douglas	Big Bear Blvd., Big Bear	3/15/46	1 Pump Block Completed 7/15/47
MacMillan	1756 So. Mt. Vernon, Colton	3/15/47	Garage Completed 7/3/47
Shell	1000 Pines Road, Crestline	6/15/47	1 Pump Block
Shell	16th & Mt. Vernon, San Bdno.	5/25/47	1 Pump Block
Texaco	21st & Mt. Vernon, San Bdno.	5/1/47	1 Pump Block
Union	South Colton at Tracks	6/10/47	1 Pump Block Completed 7/15/47
San Luis Obispo			
Union	SW 15th & Spring Streets, Paso Robles	6/1/47	1 Pump Block
San Pedro			
Union	SE Anaheim & Figueroa, Wilmington	5/18/47	2 Pump Blocks
Union	SE 101 Highway & Normandie, Harbor City	5/20/47	2 Pump Blocks
Union	SW Figueroa & Carson, Torrance	5/10/47	2 Pump Blocks
Union	NW Avalon & Sepulveda, Wilmington	5/1/47	2 Pump Blocks

[fol. 2765]

DEFENDANT EXHIBIT NO. UU—Continued

List of Competitive Service Station Construction Activity
Showing Work In Progress as of July 15, 1947

Long Beach District

Company	Location	Approx. Date Construction Started	Type Station—Remarks
Santa Ana			
Associated	SW Imperial Highway & Pomona, Brea	7/1/47	1 Pump Block
Associated	NE Ash & Spadra, Fullerton	7/15/47	2 Pump Blocks
Associated	NE Palm & Center, Anaheim	7/6/47	2 Pump Blocks
Harbor	SW Commonwealth & Brookhurst, Fullerton	6/1/47	1 Pump Block Completed 7/15/47
Shell	NE 5th & Flower St., Santa Ana	6/1/47	2 Pump Blocks Completed 7/15/47
Sunset	SW 17th & Harbor Blvd., Santa Ana	6/1/47	2 Pump Blocks Completed 7/10/47
Sunset	N Broadway entrance So. Canyon Rd., Laguna Beach	6/1/47	1 Pump Block Completed 7/15/47
Union	NE Pomona & Main, Santa Ana	7/1/47	1 Pump Block
Santa Barbara Branch			
Shell	Calle Palo & Hollister, Santa Barbara		2 Pump Blocks—Completed 7/18/47
Shell	3135 Hollister, Santa Barbara	7/1/47	Replacing Temporary Building
Whittier			
General Petroleum	NE Pioneer & Orangethorpe Ave., Artesia	7/15/47	Truck Type Station
Texas	Philadelphia & Painter, Whittier	7/15/47	2 Pump Blocks
Union	NE Firestone & Imperial Blvd., Downey	7/15/47	2 Pump Blocks

[fol. 2766] DEFENDANT'S EXHIBIT VV

Dealer Agreement

This agreement, dated the day of , 193 , by and between Standard Oil Company of California, a corporation, hereinafter called "Company," and , hereinafter called "Dealer";

Witnesseth:

Company hereby appoints its Dealer to operate Company's service station and any other facilities in connection therewith, located at in the City of State of , upon the following terms and conditions:

1. Company hereby sells to Dealer and Dealer buys from Company all of Dealer's requirements of gasoline used or sold or bought to be used or sold by Dealer in the conduct of his business on the above described premises.

2. Deliveries shall be made at the above mentioned location on orders of Dealer by tank truck in fairly even monthly quantities at the prices hereinafter specified.

3. It is agreed that the products to meet Dealer's requirements hereunder shall be Company's regular commercial brands of Standard and Standard Ethyl Gasolines. Dealer shall, however, have the right to purchase from Company hereunder and Company agrees to sell and deliver to Dealer such quantities of Company's Flight brand of gasoline as Dealer may order from time to time, Company to be obligated to deliver said product, however, only during such time or times as the same is being marketed by Company generally at point of delivery.

4. The price which Dealer shall pay Company for deliveries of gasoline hereunder shall be Company's posted tank truck price to Dealer's class of trade generally at time and place of delivery for the particular brand of gasoline involved.

5. Company agrees to sell to Dealer, and Dealer agrees to buy and stock at said location during the life of this contract, in quantities sufficient to meet the demand therefor,

all of Dealer's requirements of lubricating products, and Dealer agrees to diligently promote the sale of said products. The price which Dealer shall pay Company for deliveries of lubricating products hereunder shall be Company's posted list price therefor at time and place of delivery for the particular product, type and class of delivery involved.

6. Any and all products delivered to Dealer hereunder and resold by Dealer shall be resold at not less than Company's posted retail price therefor at time and place of delivery, and said products shall not be advertised, offered for sale, or sold at a lower price.

7. Terms shall be net cash at time of delivery, except at Company's option. If at any time Dealer shall fail to make any payment due hereunder, such failure shall, at Company's option, be deemed by Company to be a breach of the entire contract and Company may suspend deliveries until such payment has been made or may terminate this contract. No such suspension or termination shall however affect any obligation of Dealer hereunder.

8. Any tax imposed by any governmental authority upon or measured by the production or manufacture of the goods, the subject matter of this agreement, or upon, incident to, or as a result of the transaction in this agreement provided for shall, if payable by the Company, be added to the price specified herein and shall be paid by the Dealer to the Company at the time of and in addition to payment of the purchase price herein provided.

9. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition; and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees that the colors, brands, trade-marks, or trade brands appearing on the equipment at the premises above described, or which may hereafter be placed thereon by Company or on Company's order, will not be removed therefrom.

10. Dealer agrees to push diligently the sale of all products and goods delivered to Dealer hereunder, and to use his best efforts to increase the sale thereof. Dealer shall

not adulterate or substitute such products or goods with any other products whatsoever.

11. Dealer agrees to protect, defend, and hold harmless the company against all claims for damage to property, or injury or death to persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

12. In the event of the breach of any clause hereof, or if Dealer in the opinion of Company does not fully perform Dealer's obligations hereunder, Company may revoke this agreement forthwith.

13. Dealer agrees to conduct all operations hereunder in strict compliance with all the laws, ordinances and regulations of governmental authorities. Dealer further agrees to conduct said operations in a manner best suited for the preservation of Company's property of whatever kind and nature, the furtherance of the sale of Company's products and the promotion of public good will towards the Company. If is understood and agreed that Dealer in the performance of this agreement is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his physical conduct in the performance of this agreement. It is further understood and agreed that Company reserves no right to exercise any control over any of Dealer's employees, [fol. 2767] and that all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer undertakes and agrees that he will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under the Federal Social Security Act and State Unemployment Compensation Laws as to all persons employed by and

working for him in connection with the performance of this agreement.

14. Company, in its uncontrolled discretion, may at any time change the brand name or any distinctive designation of any of its products. Should Company do so, this contract shall be deemed to cover the product of the new name and/or designation to the same extent as if said name or designation was specifically set forth herein.

15. It is understood and agreed that the product or products covered by this contract will be sold to the public as the product or products of Company under Company's regular trade-marks and brands for such product or products. Dealer is not to use, in connection with the sale and/or advertisement for sale of said product or products, any trade-mark, trade name or color scheme other than those regularly used by Company for such product or products, unless expressly consented to in writing by Company. Upon written notice from Company or upon any termination of this contract, Dealer shall discontinue the use, in any manner, of Company's trade-marks, trade names and/or color schemes.

16. This agreement shall be operative from and after the day of 19 , and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first 6 months of any contract year, or at the end of any such year by giving to the other at least 30 days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination of any lease which Company may have upon the premises covered by this agreement.

17. Dealer shall pay to Company for the use of Company's facilities on said premises, in advance, on the 1st day of each and every month during the life of this Agreement commencing on the day of 193 , the sum of Dollars ( ).

18. This agreement shall not be assignable without the written consent of Company first had and obtained.

19. Until further notice from Company, all payments to be made and notices to be given by or to Company hereunder

shall be made or given by or to Standard Stations, Inc., as the case may be.

20. The waiver of any breach of any provision hereof shall not be deemed to be a waiver of the breach of any other provision or provisions hereof, or of any subsequent or continuing breach of such provision or provisions.

21. In the event Company is prevented from or hindered in making deliveries hereunder due to fire, riot, labor disturbances, earthquakes, war, acts of any government (whether foreign or domestic, federal, state, county or municipal), accident, total or partial failure of transportation or delivery facilities or supplies, shortage of products deliverable under this contract due to a shortage in the available supply of crude oil, or any cause beyond its control whether similar to the foregoing causes or not, the obligation of Company to make deliveries during the period of such disability shall be suspended.

22. This Agreement as of the date of commencement hereof shall terminate and supersede that certain agreement between Dealer herein and Company or Standard Stations, Inc., its predecessor in interest, respecting the demised premises dated the day of 193 .

STANDARD OIL COMPANY OF CALIFORNIA, Company,
By ——— ———,
Attorney in Fact.
Dealer.

For Use in California, Oregon, Washington, Nevada and Arizona.

[fol. 2768] Dealer Agreement

This Agreement, dated the day of , 19 , by and between STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Company," and , hereinafter called "Dealer";

Witnesseth:

Company hereby appoints its Dealer to operate Company's service station and any other facilities in connection therewith, located at

in the City of
State of , upon the following terms and conditions:

1. Company agrees to sell to Dealer, and Dealer agrees to buy from Company and stock and offer for sale all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer in the conduct of his business on the premises herein described. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by Standard Stations, Inc. in Dealer's vicinity, and Dealer agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station.

2. Deliveries of gasoline shall be made at the above mentioned location on orders of Dealer by tank truck in fairly even monthly quantities.

3. The price Dealer shall pay Company for petroleum products purchased by Dealer shall be Company's posted price for the same or similar products to its dealers generally in Dealer's vicinity at time and place of delivery.

4. Any and all petroleum products sold to Dealer hereunder and sold by Dealer shall be sold at not less than Company's authorized retail price therefor at time and place of sale and said products shall not be advertised, offered for sale, or sold at a lower price.

5. Terms shall be net cash at time of delivery, except at Company's option. If at any time Dealer shall fail to make any payment due hereunder, such failure shall, at Company's option, be deemed by Company to be a breach of the entire contract and Company may suspend deliveries until such payment has been made or may terminate this contract. No such suspension or termination shall however affect any obligation of Dealer hereunder.

6. Any tax, or the amount thereof, now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, or manufacture of the goods the subject matter of this agreement, shall, if collectable or payable by the Company,

be paid by the Dealer on demand by the Company, as tax collectable or as an increase in the prices otherwise herein provided for, including maximum prices.

7. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees that the colors, brands, trade-marks, or trade brands appearing on the equipment at the premises above described, or which may hereafter be placed thereon by Company or on Company's order, will not be removed therefrom.

8. Dealer agrees to push diligently the sale of all products and goods delivered to Dealer hereunder, and to use his best efforts to increase the sale thereof. Dealer shall not adulterate or substitute such products or goods with any other products whatsoever.

9. Dealer agrees to protect, defend, and hold harmless the Company against all claims for damage to property, or injury or death to persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

10. In the event of the breach of any clause hereof, or if Dealer in the opinion of Company does not fully perform Dealer's obligations hereunder, Company may revoke this agreement forthwith.

11. Dealer agrees to conduct all operations hereunder in strict compliance with all the laws, ordinances and regulations of governmental authorities. Dealer further agrees to conduct said operations in a manner best suited for the preservation of Company's property of whatever kind and nature, the furtherance of the sale of Company's products and the promotion of public good will towards the Company. It is understood and agreed that Dealer in the performance of this agreement is engaged in an independent

business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his physical conduct in the performance of this agreement. It is further understood and agreed that Company reserves no right to exercise any control over any of Dealer's employees and that all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer undertakes and agrees that he will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under the Federal Social Security Act and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

[fol. 2769] 12. Company, in its uncontrolled discretion, may at any time change the brand name or any distinctive designation of any of its products. Should Company do so, this contract shall be deemed to cover the product of the new name and/or designation to the same extent as if said name or designation was specifically set forth herein.

13. It is understood and agreed that the product or products covered by this contract will be sold to the public as the product or products of Company under Company's regular trade-marks and brands for such product or products. Dealer is not to use, in connection with the sale and/or advertisement for sale of said product or products, any trade-mark, trade name or color scheme other than those regularly used by Company for such product or products, unless expressly consented to in writing by Company. Upon written notice from Company or upon any termination of this contract, Dealer shall discontinue the use in any manner, of Company's trade-marks, trade names and/or color schemes.

14. This agreement shall be operative from and after the day of , 19 , and from

year to year thereafter; provided, however, either party may terminate this agreement at the end of the first 6 months of any contract year, or at the end of any such year by giving to the other at least 30 days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination of any lease which Company may have upon the premises covered by this agreement.

15. Dealer shall pay to Company for the use of Company's facilities on said premises, in advance, on the ..... day of each and every month during the life of this Agreement, commencing on the ..... day of ....., 19 ...., the sum of ..... Dollars ($ .....).

16. This agreement shall not be assignable without the written consent of Company first had and obtained.

17. Until further notice from Company, all payments to be made and notices to be given by or to Company hereunder shall be made or given by or to Standard Stations, Inc. as the case may be.

18. The waiver of any breach of any provision hereof shall not be deemed to be a waiver of the breach of any other provision or provisions hereof, or of any subsequent or continuing breach of such provision or provisions.

19. If Company is prevented from or hindered in making deliveries hereunder due to fire, riot, labor disturbances, earthquakes, war, acts of any government (whether foreign or domestic, federal, state, county or municipal), accident, total or partial failure of transportation or delivery facilities or supplies, shortage of products deliverable under this contract due to a shortage in the supply of crude oil produced in the State of California, or any cause beyond its control whether similar to the foregoing causes or not, the obligation of Company to make deliveries during the period of such disability shall be suspended.

20. This Agreeent shall, as of the commencement date hereof and while this Agreement is in effect, suspend the operation of all prior contracts, leases, subleases, Dealer and Agency Agreements between Dealer and Company or

Standard Stations, Inc., its predecessor in interest, respecting the demised premises.

STANDARD OIL COMPANY OF CALIFORNIA, Company.
By .....

..... Dealer.

For Use in California, Oregon, Washington, Nevada and Arizona.

[fol. 2770] Dealer Agreement

This Agreement, dated the ..... day of ....., 19 .., by and between STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Company," and ....., hereinafter called "Dealer";

Witnesseth:

Company hereby appoints ..... its Dealer for the sale of petroleum products and other merchandise marketed by Company at ..... in the City of ..... State of ....., upon the following terms and conditions:

1. Company agrees to sell to Dealer, and Dealer agrees to buy from Company and stock and offer for sale all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer in the conduct of his business on the premises herein described. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by Standard Stations, Inc. in Dealer's vicinity, and Dealer agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station.

2. Deliveries of gasoline shall be made at the above mentioned location on orders of Dealer by tank truck in fairly even monthly quantities.

3. The price Dealer shall pay Company for petroleum products purchased by Dealer shall be Company's posted

price for the same or similar products to its dealers generally in Dealer's vicinity at time and place of delivery.

4. Any and all petroleum products sold to Dealer hereunder and sold by Dealer shall be sold at not less than Company's authorized retail price therefor at time and place of sale and said products shall not be advertised, offered for sale, or sold at a lower price.

5. Terms shall be net cash at time of delivery, except at Company's option. If at any time Dealer shall fail to make any payment due hereunder, such failure shall, at Company's option, be deemed by Company to be a breach of the entire contract and Company may suspend deliveries until such payment has been made or may terminate this contract. No such suspension or termination shall however affect any obligation of Dealer hereunder.

6. Any tax, or the amount thereof, now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, or manufacture of the goods the subject matter of this agreement, shall, if collectable or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectable or as an increase in the prices otherwise herein provided for, including maximum prices.

7. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes; and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees that the colors, brands, trade-marks, or trade brands appearing on the equipment at the premises above described, or which may hereafter be placed thereon by Company or on Company's order, will not be removed therefrom.

8. Dealer shall not adulterate or substitute Company's products or goods with any other products whatsoever.

9. Dealer agrees to protect, defend, and hold harmless the Company against all claims for damage to property, or injury or death to persons, directly or indirectly resulting

from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

10. In the event of the breach of any clause hereof, Company may revoke this agreement forthwith.

11. Dealer agrees to conduct all operations hereunder in strict compliance with all laws, ordinances and regulations of governmental authorities. Dealer further agrees to conduct said operations in a manner best suited for the preservation of Company's property of whatever kind and nature, the furtherance of the sale of Company's products and the promotion of public good will towards the Company. It is understood and agreed that Dealer in the performance of this agreement is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his physical conduct in the performance of this agreement. It is further understood and agreed that Company reserves no right to exercise any control over any of Dealer's employees and that all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer undertakes and agrees that he will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under the Federal Social Security Act and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

[fol. 2771] 12. Company, in its uncontrolled discretion, may at any time change the brand name or any distinctive designation of any of its products. Should Company do so, this contract shall be deemed to cover the product of the new name and/or designation to the same extent as if said name or designation was specifically set forth herein.

13. It is understood and agreed that the product or products covered by this contract will be sold to the public as the product or products of Company under Company's regular trade-marks and brands for such product or products. Dealer is not to use, in connection with the sale and/or advertisement for sale of said product or products, any trade-mark, trade name or color scheme other than those regularly used by Company for such product or products, unless expressly consented to in writing by Company. Upon written notice from Company or upon any termination of this contract, Dealer shall discontinue the use, in any manner, of Company's trade-marks, trade names and/or color schemes.

14. This agreement shall be operative from and after the ..... day of ....., of 19 , and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first 6 months of any contract year, or at the end of any such year by giving to the other at least 30 days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination of any lease which Company may have upon the premises covered by this agreement.

15. Dealer shall pay to Company for the use of Company's facilities on said premises, in advance, on the ..... day of each and every month during the life of this Agreement, commencing on the ..... day of ....., 19 , the sum of ..... Dollars ($).

16. This agreement shall not be assignable without the written consent of Company first had and obtained.

17. The waiver of any breach of any provision hereof shall not be deemed to be a waiver of the breach of any other provision or provisions hereof, or of any subsequent or continuing breach of such provision or provisions.

18. If Company is prevented from or hindered in making deliveries hereunder due to fire, riot, labor disturbances, earthquakes, war, acts of any government (whether foreign or domestic, federal, territorial, county or municipal), accident, total or partial failure of transportation or delivery

facilities or supplies, shortage of products deliverable under this contract due to a shortage in the supply of crude oil produced in the State of California, or any cause beyond its control whether similar to the foregoing causes or not, the obligation of Company to make deliveries during the period of such disability shall be suspended.

19. This Agreement shall, as of the commencement date hereof, terminate all prior Dealer and Agency Agreements between Dealer and Company respecting the demised premises.

STANDARD OIL COMPANY OF CALIFORNIA, Company.

By .....

Attorney in fact.

.....

Dealer.

For Use in California, Oregon, Washington, Nevada and Arizona.

[fol. 2772] Dealer Agreement

This Agreement, dated the ..... day of ....., 19 .., by and between STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Company," and ....., herein called "Dealer";

Witnesseth:

Company hereby appoints ..... its Dealer for the sale of petroleum products and other merchandise marketed by Company at ..... in the City of ..... State of ....., upon the following terms and conditions:

1. Company agrees to sell to Dealer, and Dealer agrees to buy from Company and stock and offer for sale all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer in the conduct of his business on the premises herein described. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by Standard Stations, Inc. in Dealer's vicinity, and Dealer agrees not to store, handle, distribute, or sell any other

brand or brands of petroleum products at or from the station.

2. Deliveries of gasoline shall be made at the above mentioned location on orders of Dealer by tank truck in fairly even monthly quantities.

3. The price Dealer shall pay Company for petroleum products purchased by Dealer shall be Company's posted price for the same or similar products to its dealers generally in Dealer's vicinity at time and place of delivery.

4. Any and all petroleum products sold to Dealer hereunder and sold by Dealer shall be sold at not less than Company's authorized retail price therefor at time and place of sale and said products shall not be advertised, offered for sale, or sold at a lower price. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging the trade for gasoline or lubricating oil sold to Dealer hereunder, it is agreed that the design, size, and location of such signs shall be subject to Company's approval.

5. Terms shall be net cash at time of delivery, except at Company's option. If at any time Dealer shall fail to make any payment due hereunder, such failure shall, at Company's option, be deemed by Company to be a breach of the entire contract, and Company may suspend deliveries until such payment has been made or may terminate this contract. No such suspension or termination shall however affect any obligation of Dealer hereunder.

6. Any tax, or the amount thereof, now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, or manufacture of the goods the subject matter of this agreement, shall, if collectable or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectable or as an increase in the prices otherwise herein provided for, including maximum prices.

7. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, how-

ever, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees that the colors, brands, trade-marks, or trade brands appearing on the equipment at the premises above described, or which may hereafter be placed thereon by Company or on Company's order, will not be removed therefrom.

8. Dealer shall not adulterate or substitute Company's products or goods with any other products whatsoever.

9. Dealer agrees to protect, defend, and hold harmless the Company against all claims for damage to property, or injury or death to persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

10. In the event of the breach of any clause hereof, Company may revoke this agreement forthwith.

11. Dealer agrees to conduct all operations hereunder in strict compliance with all laws, ordinances and regulations of governmental authorities. Dealer further agrees to conduct said operations in a manner best suited for the preservation of Company's property of whatever kind and nature, the furtherance of the sale of Company's products and the promotion of public good will towards the Company. It is understood and agreed that Dealer in the performance of this agreement is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his physical conduct in the performance of this agreement. It is further understood and agreed that Company reserves no right to exercise any control over any of Dealer's employees and that all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer undertakes and agrees that he will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evi-

7-47 (Repl. Original)

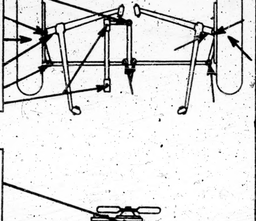
MODEL		CRANKCASE					TRANSMISSION				DIFFERENTIAL				GAS TANK	COOLING SYSTEM
Year	Model	Capacity Qts.	Hard Driving or Above 90°F. SAE	Summer SAE	Winter SAE	Winter Below 10°F. SAE	Capacity Lbs.	Summer SAE	Winter SAE	Winter Below 10°F. SAE	Capacity Lbs.	Summer SAE	Winter SAE	Winter Below 10°F. SAE	Capacity Gals.	Capacity Qts.
1937	Super 8	8	40	30	20W	10W	4½	140GL	90GL	80GL	6½	90HY	90HY	80HY	25	20
1938	Super 8	8	40	30	20W	10W	4½	140GL	90GL	80GL	6½	90HY	90HY	80HY	24½	20
1939	Super 8	7½	40	30	20W	10W	Std. 2 Odriv. 3¼	140GL 90HY	90GL 90HY	80GL 80HY	6	90HY	90HY	80HY	21	22

RED NUMBERS in left-side column refer to numbered Individualized Service Notes.

STUB ARROWS—Lubricate same as corresponding point on left side of chassis.

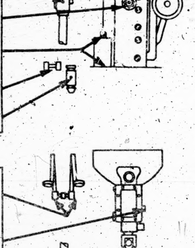
FRONT END POINTS

LUBRICANT	INTERVAL	POINT
Ch. Gr.	1000 mi.	INTERMEDIATE STEERING ARM 1939 only
Ch. Gr.	1000 mi.	KING PIN
W.B. Gr.	5000 mi. clean, repack	(1) FRONT WHEEL BEARINGS
Ch. Gr.	1000 mi.	(2) LOWER CONTROL ARM
Ch. Gr.	1000 mi.	TIE ROD
Ch. Gr.	1000 mi.	(3) DRAG LINK



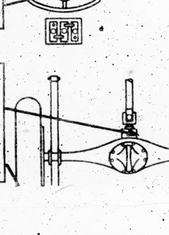
UNDER HOOD POINTS

LUBRICANT	INTERVAL	POINT
M.O.SAE 30	1000 mi.	WATER PUMP—FAN UNIT 1937, 38 only
H.O. 3 or 4 drops	1000 mi.	GENERATOR
M.O. See Table	1000 mi. drain, refill	CRANKCASE
Gear Gr. or G.L. SAE 90	1000 mi.	(4) STEERING GEAR
W.B. Gr. H.O.	1000 mi. 1 turn cup saturate wick	DISTRIBUTOR Grease Cup Wick Under Rotor
H.O. 3 or 4 drops	1000 mi.	STARTER 1 or 2 oilers
Ch. Gr.	1000 mi.	CLUTCH RELAY LEVER 1939 only
Hydraulic Brake Fluid	1000 mi. check level	(5) HYD. BRAKE MASTER CYL.



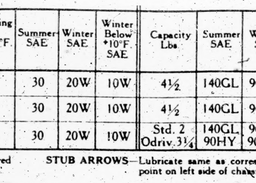
CENTER CHASSIS POINTS

LUBRICANT	INTERVAL	POINT
Gh. Gr.	1000 mi.	(6) PEDAL BRGS. 1939 only
G.L. or HY. See Table	1000 mi. check level 5000 mi. drain, flush and refill	(7) TRANSMISSION
Ch. Gr. Replace plug	1000 mi.	PROPELLER SHAFT SPLINE fitting or plug



REAR END POINTS

LUBRICANT	INTERVAL	POINT
HY. See Table	1000 mi. check level 5000 mi. drain, flush and refill	(8) DIFFERENTIAL
Ch. Gr.	1000 mi.	SPRING SHACKLE 1937, 38 only



INDIVIDUALIZED SERVICE NOTES

(1) **FRONT WHEEL BEARINGS:** Some models equipped with dust shields. Necessary to remove shields before pulling wheels.

(2) **LOWER CONTROL ARM:** Avoid excess pressure. All other points in front suspension, rubber bushed.

(3) **DRAG LINK:** (1939) Has transverse drag link.

(4) **STEERING GEAR:** Fill to level of plug.

(5) **HYDRAULIC BRAKE MASTER CYLINDER:** Reached from under floor board on 1937. Maintain level within ¼ to ½ inch from bottom of filler hole. Wipe dirt from around filler hole before removing plug. **CAUTION:** Never add any fluid to system except approved brake fluid, as serious trouble may result.

(6) **PEDAL BEARINGS** (1937, 38): M.O. SAE 30—1000 mi. Oil holes accessible through holes in floor board.

(7) **TRANSMISSION WITH OVERDRIVE (Optional 1939 Only):** Two filler plugs and two drain plugs. Drain through both drain plugs. Refill overdrive to level of its filler hole first, then refill transmission.

(8) **DIFFERENTIAL** (1939): **CAUTION:** Arrow shows correct location of filler plug. Do not disturb six-sided bolt on left side of housing.

METAL COVERED REAR SPRINGS (1937, 38 Only): Refill with Ch. Gr.—5000 mi. Special tool required. Apply P.O. at cover joints.

CONTROL LINKAGE: Clean and lubricate every 1000 mi. Apply M.O. at bushings and clevis pins. Ch. Gr. on exposed sliding surfaces.

MECHANIC'S JOBS

UNIVERSAL JOINTS: W.B. Gr.—30,000 mi.

REAR WHEEL BEARINGS: W.B. Gr.—30,000 mi. Remove axle shafts, clean and repack bearings.

SHOCK ABSORBERS: Inspect for loose or broken linkage, examine for leaks every 1000 mi. Require shop service every 10,000 mi. or when leaking.

NO LUBRICATION REQUIRED

INTERMEDIATE STEERING ARM (1937, 38): Sealed ball bearing.

WATER PUMP—FAN UNIT (1939): Sealed ball bearings.

CLUTCH RELEASE BEARING: Sealed ball brg.

PROPELLER SHAFT CENTER BEARING (Long Wheelbase Models Only): Sealed ball bearing.

REAR SPRING BOLTS (ALL), SHACKLES (1939): Rubber bushed.

REAR SPRINGS (1939): **CAUTION:** Must not be lubricated.

PARKING BRAKE CABLES: Packed at assembly

AIR CLEANERS

OIL BATH TYPE: Service every 5000 mi., oftener

Year	Model	Capacity Qts.	Hard Driving or Above 90°F. SAE	Summer SAE	Winter SAE	Winter Below 10°F. SAE	Capacity Lbs.	Summer SAE	Winter SAE	Winter Below 10°F. SAE	Capacity Lbs.	Summer SAE	Winter SAE	Winter Below 10°F. SAE	Capacity Gals.	Capacity Qts.
1937	Super 8	8	40	30	20W	10W	4½	140GL	90GL	80GL	6½	90HY	90HY	80HY	25	20
1938	Super 8	8	40	30	20W	10W	4½	140GL	90GL	80GL	6½	90HY	90HY	80HY	24½	20
1939	Super 8	7½	40	30	20W	10W	Std. 2 Odriv. 3¼	140GL 90HY	90GL 90HY	80GL 80HY	6	90HY	90HY	80HY	21	22

RED NUMBERS in left-side column refer to numbered Individualized Service Notes.

STUB ARROWS—Lubricate same as corresponding point on left side of chassis.

FRONT END POINTS

LUBRICANT	INTERVAL	POINT
Ch. Gr.	1000 mi.	INTERMEDIATE STEERING ARM 1939 only
Ch. Gr.	1000 mi.	KING PIN
W.B. Gr.	5000 mi. clean, repack	(1) FRONT WHEEL BEARINGS
Ch. Gr.	1000 mi.	(2) LOWER CONTROL ARM
Ch. Gr.	1000 mi.	TIE ROD
Ch. Gr.	1000 mi.	(3) DRAG LINK

UNDER HOOD POINTS

LUBRICANT	INTERVAL	POINT
M.O.SAE 30	1000 mi.	WATER PUMP—FAN UNIT 193. 38 only
H.O. 3 or 4 drops	1000 mi.	GENERATOR
M.O. See Table	1000 mi. drain, refill	CRANKCASE
Gear Gr. or G.L. SAE 90	1000 mi.	(4) STEERING GEAR
W.B. Gr. H.O.	1000 mi. 1 turn cup saturate wick	DISTRIBUTOR Grease Cup Wick Under Rotor
H.O. 3 or 4 drops	1000 mi.	STARTER 1 or 2 oilers
Ch. Gr.	1000 mi.	CLUTCH RELAY LEVER 1939 only
Hydraulic Brake Fluid	1000 mi. check level	(5) HYD. BRAKE MASTER CYL.

CENTER CHASSIS POINTS

LUBRICANT	INTERVAL	POINT
Ch. Gr.	1000 mi.	(6) PEDAL BRGS. 1939 only
G.L. or HY. See Table	1000 mi. check level 5000 mi. drain, flush and refill	(7) TRANSMISSION
Ch. Gr. Replace plug	1000 mi.	PROPELLER SHAFT SPLINE fitting or plug

REAR END POINTS

LUBRICANT	INTERVAL	POINT
HY. See Table	1000 mi. check level 5000 mi. drain, flush and refill	(8) DIFFERENTIAL
Ch. Gr.	1000 mi.	SPRING SHACKLE 1937, 38 only

INDIVIDUALIZED SERVICE NOTES

(1) **FRONT WHEEL BEARINGS:** Some models equipped with dust shields. Necessary to remove shields before pulling wheels.

(2) **LOWER CONTROL ARM:** Avoid excess pressure. All other points in front suspension, rubber bushed.

(3) **DRAG LINK:** (1939) Has transverse drag link.

(4) **STEERING GEAR:** Fill to level of plug.

(5) **HYDRAULIC BRAKE MASTER CYLINDER:** Reached from under floor board on 1937. Maintain level within ¼ to ½ inch from bottom of filler hole. Wipe dirt from around filler hole before removing plug. **CAUTION:** Never add any fluid to system except approved brake fluid, as serious trouble may result.

(6) **PEDAL BEARINGS** (1937, 38): M.O. SAE 30—1000 mi. Oil holes accessible through holes in floor board.

(7) **TRANSMISSION WITH OVERDRIVE (Optional 1939 Only):** Two filler plugs and two drain plugs. Drain through both drain plugs. Refill overdrive to level of its filler hole first, then refill transmission.

(8) **DIFFERENTIAL** (1939): **CAUTION:** Arrow shows correct location of filler plug. Do not disturb six-sided bolt on left side of housing.

METAL COVERED REAR SPRINGS (1937, 38 Only): Refill with Ch. Gr.—5000 mi. Special tool required. Apply P.O. at cover joints.

CONTROL LINKAGE: Clean and lubricate every 1000 mi. Apply M.O. at bushings and clevis pins. Ch. Gr. on exposed sliding surfaces.

MECHANIC'S JOBS

UNIVERSAL JOINTS: W.B. Gr.—30,000 mi.

REAR WHEEL BEARINGS: W.B. Gr.—30,000 mi. Remove axle shafts, clean and repack bearings.

SHOCK ABSORBERS: Inspect for loose or broken linkage, examine for leaks every 1000 mi. Require shop service every 10,000 mi. or when leaking.

NO LUBRICATION REQUIRED

INTERMEDIATE STEERING ARM (1937, 38): Sealed ball bearing.

WATER PUMP—FAN UNIT (1939): Sealed ball bearings.

CLUTCH RELEASE BEARING: Sealed ball brg.

PROPELLER SHAFT CENTER BEARING (Long Wheelbase Models Only): Sealed ball bearing.

REAR SPRING BOLTS (ALL), SHACKLES (1939): Rubber bushed.

REAR SPRINGS (1939): **CAUTION:** Must not be lubricated.

PARKING BRAKE CABLES: Packed at assembly

AIR CLEANERS

OIL-BATH TYPE: Service every 5000 mi., oftener under dusty conditions. Wash cup and element in solvent, drain. Fill cup to level mark with M.O. SAE 50—Summer; SAE 20—Winter. Capacity, approx. 1 pt. Clean the air tube to engine. When assembling make certain all connections are tight.

CRANKCASE FILLER CAP: Inspect frequently, clean if necessary. Wash in solvent, drain, re-oil with M.O. or P.O., drain excess.

COOLING SYSTEM: Drain at 2 points. Cock on bottom of radiator (1937, early 1938) is at lower hose connection, (late 1938, 1939) is at center, front. Plug on cylinder block is at left-side, near starter.

AUTO HOIST ADAPTER

All Models — **Use Method "B"**

MUFFLER AND EXHAUST PIPE RESTRICT CLEARANCE

Lift ends must be flush with floor.
Remove all obstructions on lift rails.
Inflate tires fully and drive car on 2" x 12" planks, if needed for additional clearance.

DRIVE ON SLOWLY AND APPLY BRAKES SLOWLY

LUBRICANT ABBREVIATIONS

M.O.—RPM Compounded Motor Oil.
G.L.—RPM Gear Lubricant (Compounded).
HY.—RPM Hypoid Lubricant.
H.O.—RPM Handy Oil.
P.O.—RPM Penetrating Oil.
Ch.Gr.—RPM Chassis Grease.
W.B.Gr.—RPM Wheel Bearing Grease.
Gear.Gr.—RPM Gear Grease.

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3048

1937 1938 SUPER 8 1939 **PACKARD**

YEAR and MODEL are usually shown on State License Registration Card. Serial No. is stamped on upper left side of cylinder block. First symbols identify the model. Super 8 (1937), Models start with T-; Super 8 (1938) with AS-; and Super 8 (1939) with B5-.

dence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under the Federal Social Security Act and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

[fol. 2773] 12. Company, in its uncontrolled discretion, may at any time change the brand name or any distinctive designation of any of its products. Should Company do so, this contract shall be deemed to cover the product of the new name and/or designation to the same extent as if said name or designation was specifically set forth herein.

13. It is understood and agreed that the product or products covered by this contract will be sold to the public as the product or products of Company under Company's regular trade-marks and brands for such product or products. Dealer is not to use, in connection with the sale and/or advertisement for sale of said product or products, any trade-mark, trade name or color scheme other than those regularly used by Company for such product or products, unless expressly consented to in writing by Company. Upon written notice from Company or upon any termination of this contract, Dealer shall discontinue the use, in any manner, of Company's trade-marks, trade names and/or color schemes.

14. This agreement shall be operative from and after the day of , 19 , and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first 6 months of any contract year, or at the end of any such year by giving to the other at least 30 days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination of any lease which Company may have upon the premises covered by this agreement.

15. Dealer shall pay to Company for the use of Company's facilities on said premises, in advance, on the day of each and every month during the life of this Agreement, commencing on the day of , 19 , the sum of Dollars ($):

16. This agreement shall not be assignable without the written consent of Company first had and obtained.

17. The waiver of any breach of any provision hereof shall not be deemed to be a waiver of the breach of any other provision or provisions hereof, or of any subsequent or continuing breach of such provision or provisions.

18. If Company is prevented from or hindered in making deliveries hereunder due to fire, riot, labor disturbances, earthquakes, war, acts of any government (whether foreign or domestic, federal, state, county or municipal), accident, total or partial failure of transportation or delivery facilities or supplies, shortage of products deliverable under this contract due to a shortage in the supply of crude oil produced in the State of California, or any cause beyond its control whether similar to the foregoing causes or not, the obligation of Company to make deliveries during the period of such disability shall be suspended.

19. This Agreement shall, as of the commencement date hereof, terminate all prior Dealer and Agency Agreements between Dealer and Company respecting the demised premises.

STANDARD OIL COMPANY OF CALIFORNIA, Company.

By

Dealer.

For Use in California, Oregon, Washington, Nevada and Arizona.

[fol. 2774] Dealer Agreement

This Agreement, dated the day of , 19 , by and between STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Company," and , herein called "Dealer";

Witnesseth:

Company hereby appoints its Dealer for the sale of petroleum products and other merchandise marketed by Company at in the City of County of State of upon the following terms and conditions:

1. Company agrees to sell to Dealer, and Dealer agrees to buy from Company and stock and offer for sale all of

Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer in the conduct of his business on the premises herein described. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by Standard Stations, Inc. in Dealer's vicinity, and Dealer agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station.

2. Deliveries of gasoline shall be made at the above mentioned location on orders of Dealer by tank truck in fairly even monthly quantities.

3. The price Dealer shall pay Company for petroleum products purchased by Dealer shall be Company's posted price for the same or similar products to its dealers generally in Dealer's vicinity at time and place of delivery.

4. Any and all petroleum products sold to Dealer hereunder and sold by Dealer shall be sold at not less than Company's authorized retail price therefor at time and place of sale and said products shall not be advertised, offered for sale, or sold at a lower price.

5. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging the trade for gasoline or lubricating oil sold to Dealer hereunder, it is agreed that the design, size, and location of such signs shall be subject to Company's approval.

6. Terms shall be net cash at time of delivery, except at Company's option. If at any time Dealer shall fail to make any payment due hereunder, such failure shall, at Company's option, be deemed by Company to be a breach of the entire contract and Company may suspend deliveries until such payment has been made or may terminate this contract. No such suspension or termination shall however affect any obligation of Dealer hereunder.

7. Any tax, or the amount thereof, now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, or manufacture of the goods the subject matter of this agreement, shall, if collectable of payable by the Company,

be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for.

8. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at is discretion, maintain and repair said facilities. Dealer further agrees that the colors, brands, trade-marks, or trade brands appearing on the equipment at the premises above described, or which may hereafter be placed thereon by Company or on Company's order, will not be removed therefrom.

9. Dealer agrees to push diligently the sale of all products and goods delivered to Dealer hereunder, and to use his best efforts to increase the sale thereof. Dealer shall not adulterate or substitute such products or goods with any other products whatsoever.

10. Dealer agrees to protect, defend, and hold harmless the Company against all claims for damage to property, or injury or death to persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

11. In the event of the breach of any clause hereof, or if Dealer in the opinion of Company does not fully perform Dealer's obligations hereunder, Company may revoke this agreement forthwith.

12. Dealer agrees to conduct all operations hereunder in strict compliance with all the laws, ordinances and regulations of governmental authorities. Dealer further agrees to conduct said operations in a manner best suited for the preservation of Company's property of whatever kind and nature, the furtherance of the sale of Company's products and the promotion of public good will towards the Company. It is understood and agreed that Dealer in the performance of this agreement is engaged in an independent business and nothing herein contained shall be construed as reserving

to Company any right to control Dealer with respect to his physical conduct in the performance of this agreement. It is further understood and agreed that Company reserves no right to exercise any control over any of Dealer's employees and that all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer undertakes and agrees that he will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under the Federal Social Security Act and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

[fol. 2775] 13. Company, in its uncontrolled discretion, may at any time change the brand name or any distinctive designation of any of its products. Should Company do so, this contract shall be deemed to cover the product of the new name and/or designation to the same extent as if said name or designation was specifically set forth herein.

14. It is understood and agreed that the product or products covered by this contract will be sold to the public as the product or products of Company under Company's regular trade-marks and brands for such product or products. Dealer is not to use, in connection with the sale and/or advertisement for sale of said product or products, any trademark, trade name or color scheme other than those regularly used by Company for such product or products, unless expressly consented to in writing by Company. Upon written notice from Company or upon any termination of this contract, Dealer shall discontinue the use, in any manner, of Company's trade-marks, trade names and/or color schemes.

15. This agreement shall be operative from and after the ..... day of ....., 19 , and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first 6

months of any contract year, or at the end of any such year by giving to the other at least 30 days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination of any lease which Company may have upon the premises covered by this agreement, or upon the termination of any sublease between Dealer and Company covering said premises.

16. This Agreement shall not be assignable without the written consent of Company first had and obtained.

17. Until further notice from Company, all payments to be made and notices to be given by or to Company hereunder shall be made or given by or to Standard Stations, Inc. as the case may be.

18. The waiver of any breach of any provision hereof shall not be deemed to be a waiver of the breach of any other provision or provisions hereof, or of any subsequent or continuing breach of such provision or provisions.

19. If Company is prevented from or hindered in making deliveries hereunder due to fire, riot, labor disturbances, earthquakes, war, acts of any government (whether foreign or domestic, federal, state, county or municipal), accident, total or partial failure of transportation or delivery facilities or supplies, shortage of products deliverable under this contract due to a shortage in the supply of crude oil produced in the State of California, or any cause beyond its control whether similar to the foregoing causes or not, the obligation of Company to make deliveries during the period of such disability shall be suspended.

20. This Agreement shall, as of the commencement date hereof, terminate all prior Dealer and Agency Agreements between Dealer and Company respecting the premises covered by this Agreement.

STANDARD OIL COMPANY OF CALIFORNIA, Company.

By

Dealer.

For Use in California, Oregon, Washington, Nevada and Arizona.

[fol. 2776] Dealer Agreement

This Agreement, dated the day of , 19 , by and between STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Company," and , hereinafter called "Dealer";

Witnesseth:

Company hereby appoints its Dealer for the sale of petroleum products and other merchandise marketed by Company at in the City of State of , upon the following terms and conditions:

1. Company agrees to sell to Dealer, and Dealer agrees to buy from Company and stock and offer for sale all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer in the conduct of his business on the premises herein described. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by Standard Stations, Inc. in Dealer's vicinity, and Dealer agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station.

2. Deliveries of gasoline shall be made at the above mentioned location on orders of Dealer by tank truck in fairly even monthly quantities.

3. The price Dealer shall pay Company for petroleum products purchased by Dealer shall be Company's posted price for the same or similar products to its dealers generally in Dealer's vicinity at time and place of delivery.

4. Any and all petroleum products sold to Dealer hereunder and sold by Dealer shall be sold at not less than Company's authorized retail price therefor at time and place of sale and said products shall not be advertised, offered for sale, or sold at a lower price. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging the trade for gasoline or lubricating oil sold to Dealer hereunder, it is agreed that the design, size, and location of such signs shall be subject to Company's approval.

5. Terms shall be net cash at time of delivery, except at Company's option. If at any time Dealer shall fail to make any payment due hereunder, such failure shall, at Company's option, be deemed by Company to be a breach of the entire contract and Company may suspend deliveries until such payment has been made or may terminate this contract. No such suspension or termination shall however affect any obligation of dealer hereunder.

6. Any tax, or the amount thereof, now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, or manufacture of the goods the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for.

7. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees that the colors, brands, trade-marks, or trade brands appearing on the equipment at the premises above described, or which may hereafter be placed thereon by Company or on Company's order, will not be removed therefrom.

8. Dealer shall not adulterate or substitute Company's products or goods with any other products whatsoever.

9. Dealer agrees to protect, defend, and hold harmless the Company against all claims for damage to property, or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

10. In the event of the breach of any clause hereof, Company may revoke this agreement forthwith.

11. Dealer agrees to conduct all operations hereunder in strict compliance with all laws, ordinances and regulations of governmental authorities. Dealer further agrees to conduct said operation in a manner best suited for the preservation of Company's property of whatever kind and nature, the furtherance of the sale of Company's products and the promotion of public good will towards the Company. It is understood and agreed that Dealer in the performance of this agreement is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his physical conduct in the performance of this agreement. It is further understood and agreed that Company reserves no right to exercise any control over any of Dealer's employees and that all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer undertakes and agrees that he will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under the Federal Social Security Act and State Unemployment Compensation laws as to all persons employed by and working for him in connection with the performance of this agreement.

[fol. 2777] 12. Company, in its uncontrolled discretion, may at any time change the brand name or any distinctive designation of any of its products. Should Company do so, this contract shall be deemed to cover the product of the new name and/or designation to the same extent as if said name or designation was specifically set forth herein.

13. It is understood and agreed that the product or products covered by this contract will be sold to the public as the product or products of Company under Company's regular trade-marks and brands for such product or products. Dealer is not to use, in connection with the sale and/or advertisement for sale of said product or products, any trade-mark, trade name or color scheme other than those regularly used by Company for such product or products, unless expressly consented to in writing by Company. Upon

written notice from Company or upon any termination of this contract, Dealer shall discontinue the use, in any manner, of Company's trade-marks, trade names and/or color schemes.

14. This agreement shall be operative during the period commencing ..... 194 .., and ending ....., 19 .., and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first 6 months of any contract year, or at the end of any such year by giving to the other at least 30 days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination of any lease which Company may have upon the premises covered by this agreement, or upon the termination of any sublease between Dealer and Company covering said premises.

15. Dealer shall pay to Company for the use of Company's facilities on said premises, in advance, on the ..... day of each and every month during the life of this agreement, commencing on the ..... day of ....., 19 .., the sum of ..... Dollars ($ .....).

16. This agreement shall not be assignable without the written consent of Company first had and obtained.

17. The waiver of any breach of any provision hereof shall not be deemed to be a waiver of the breach of any other provision or provisions hereof, or of any subsequent or continuing breach of such provision or provisions.

18. If Company is prevented from or hindered in making deliveries hereunder due to fire, riot, labor disturbances, earthquakes, war, acts of any government (whether foreign or domestic, federal, state, county or municipal), accident, total or partial failure of transportation or delivery facilities or supplies, shortage of products deliverable under this contract due to a shortage in the supply of crude oil produced in the State of California, or any cause beyond its control whether similar to the foregoing causes or not, the obligation of Company to make deliveries during the period of such disability shall be suspended.

19. This Agreement shall, as of the commencement date hereof, terminate all prior Dealer and Agency Agreements

between Dealer and Company respecting the demised premises and covering the same subject matter.

STANDARD OIL COMPANY OF CALIFORNIA, Company,
By .....
.....
.....Dealer.

For Use in California, Oregon, Washington, Nevada and Arizona.

[fol. 2778] Dealer Agreement

This Agreement, dated the ..... day of ....., 19 ..., by and between STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Company," and ....., hereinafter called "Dealer";

Witnesseth:

Company hereby appoints ..... its Dealer for the sale of petroleum products and other merchandise marketed by Company at ..... in the City of ..... State of ....., upon the following terms and conditions:

1. Company agrees to sell to Dealer, and Dealer agrees to buy from Company and stock and offer for sale all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer in the conduct of his business on the premises herein described. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by Standard Stations, Inc. in Dealer's vicinity, and Dealer agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station.

2. Deliveries of gasoline shall be made at the above mentioned location, on orders of Dealer, by tank truck in fairly even monthly quantities.

3. The price Dealer shall pay Company for petroleum products purchased by Dealer shall be Company's posted

price for the same or similar products to its dealers generally in Dealer's vicinity at time and place of delivery.

4. Any and all petroleum products sold to Dealer hereunder and sold by Dealer shall be sold at not less than Company's authorized retail price therefor at time and place of sale and said products shall not be advertised, offered for sale, or sold at a lower price. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging the trade for gasoline or lubricating oil sold to Dealer hereunder, it is agreed that the design, size, and location of such signs shall be subject to Company's approval.

5. Terms shall be net cash at time of delivery, except at Company's option. If at any time Dealer shall fail to make any payment due hereunder, such failure shall, at Company's option, be deemed by Company to be a breach of the entire contract and Company may suspend deliveries until such payment has been made or may terminate this contract. No such suspension or termination shall however affect any obligation of Dealer hereunder.

6. Any tax, or the amount thereof, now or hereafter imposed, levied ~~or assessed~~ by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, or manufacture of the goods the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for.

7. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees that the colors, brands, trade-marks, or trade brands appearing on the equipment at the premises above described, or which may hereafter be placed thereon by Company or on Company's order, will not be removed therefrom.

8. Dealer shall not adulterate or substitute Company's products or goods with any other products whatsoever.

9. Dealer agrees to protect, defend, and hold harmless the Company against all claims for damage to property, or

fault of any other provision hereof. This agreement shall, as of the commencement date hereof, terminate all prior Dealer Agreements and Agency Agreements between Dealer and Company respecting the premises covered by this agreement.

10. Company shall have the right at any time to remove from said premises any equipment or improvements placed thereunder or thereon ~~which~~ are now or hereafter owned by Company.

11. Execution of this agreement by Dealer constitutes an offer which shall not be deemed accepted by Company until Company has executed this agreement and delivered a duplicate original to the Dealer.

_____, Dealer

STANDARD OIL COMPANY OF CALIFORNIA, Company

By _____

~~Dealer~~ Agreement. For Use in California, Oregon, Washington, Nevada, and Arizona.

injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

10. In the event of the breach of any clause hereof, Company may revoke this agreement forthwith.

11. Dealer agrees to conduct all operations hereunder in strict compliance with all laws, ordinances and regulations of governmental authorities. Dealer further agrees to conduct said operations in a manner best suited for the preservation of Company's property of whatever kind and nature the furtherance of the sale of Company's products and the promotion of public good will towards the Company. It is understood and agreed that Dealer in the performance of this agreement is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his physical conduct in the performance of this agreement. It is further understood and agreed that Company reserves no right to exercise any control over any of Dealer's employees and that all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer undertakes and agrees that he will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenence of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under the Federal Social Security Act and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

[fol. 2779] 12. Company, in its uncontrolled discretion, may at any time change the brand name or any distinctive designation of any of its products. Should Company do so, this contract shall be deemed to cover the product of the new name and/or designation to the same extent as if said name or designation was specifically set forth herein.

13. It is understood and agreed that the product or products covered by this contract will be sold to the public as the product or products of Company under Company's regular trade-marks and brands for such product or products. Dealer is not to use, in connection with the sale and/or advertisement for sale of said product or products, any trade-mark, trade name or color scheme other than those regularly used by Company for such product or products, unless expressly consented to in writing by Company. Upon written notice from Company or upon any termination of this contract, Dealer shall discontinue the use, in any manner, of Company's trade-marks, trade names and/or color schemes.

14. This agreement shall be operative during the period commencing ....., 194 ..., and ending ....., 19 ..., and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first 6 months of any contract year, or at the end of any such year by giving to the other at least 30 days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination of any lease which Company may have upon the premises; covered by this agreement, or upon the termination of any sublease between Dealer and Company covering said premises.

15. Dealer shall pay to Company for the use of Company's facilities on said premises, in advance on the ..... day of each and every month during the period commencing on the ..... day of ....., 19 ..., and ending on the ..... day of ....., 19 ..., the sum of ..... Dollars ($ .....); and in advance on the ..... day of each and every month during the period commencing on the ..... day of ....., 19 ...; and ending on the ..... day of ....., 19 ..., the sum of ..... Dollars ($ .....).

16. This agreement shall not be assignable without the written consent of Company first had and obtained.

17. The waiver of any breach of any provision hereof shall not be deemed to be a waiver of the breach of any other provision or provisions hereof, or of any subsequent or continuing breach of such provision or provisions.

18. If Company is prevented from or hindered in making deliveries hereunder due to fire, riot, labor disturbances, earthquakes, war, acts of any government (whether foreign or domestic, federal, state, county or municipal), accident, total or partial failure of transportation or delivery facilities or supplies, shortage of products deliverable under this contract due to a shortage in the supply of crude oil produced in the State of California, or any cause beyond its control whether similar to the foregoing causes or not, the obligation of Company to make deliveries during the period of such disability shall be suspended.

19. This Agreement shall, as of the commencement date hereof terminate all prior Dealer and Agency Agreements between Dealer and Company respecting the premises and subject matter covered by this Agreement.

STANDARD OIL COMPANY OF CALIFORNIA, Company,

By .....

.....
Dealer.

For Use in California, Oregon, Washington, Nevada and Arizona.

[fol. 2780] Dealer Agreement

Dated , 19

1. STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Company," agrees to sell to .....,

hereinafter called "Dealer," and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at .....

The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity.

2. Deliveries shall be made in Company's customary manner. The price Dealer shall pay Company for petroleum products hereunder shall be Company's posted price to its dealers generally at time and place of delivery hereunder for the particular product and type of delivery in-

volved. Terms shall be net cash at time of delivery, except at Company's option.

3. The products covered by this agreement shall be sold by Dealer as the products of Company and only under Company's regular trade-marks or brands for such products and shall not be sold, or offered for sale, at prices lower than Company's authorized retail prices therefor at time and place of sale. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging the trade for gasoline or lubricating oil sold to Dealer hereunder, it is agreed that the design, size, and location of such signs shall be subject to Company's approval. Company shall be excused from making deliveries hereunder while prevented from or hindered in doing so in its customary manner due to causes beyond its control. Whenever such causes require that deliveries of any product hereunder be restricted, Company reserves the right to restrict deliveries of such product to Dealer proportionately with restrictions on deliveries of such products to other comparable dealers in Dealer's vicinity.

4. Dealer shall pay to Company for the use of Company's facilities on said premises, as follows:

5. This agreement shall be operative during the period commencing , 194 , and ending , 19 , and from year to year thereafter; provided, however, either party may terminate this agreement at the end of the first 6 months of any contract year, or at the end of any such year, by giving to the other at least 30 days prior thereto written notice of its intention to so terminate this agreement. Notwithstanding the foregoing, this agreement shall terminate forthwith upon the termination of any lease [fol. 2781] which Company may have upon the premises covered by this agreement, or upon the termination of any sublease between Dealer and Company covering said premises.

6. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and

repair said facilities. Dealer further agrees to protect, defend, and hold harmless the Company against all claims for damage to property (including Dealer's property), or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

7. In the performance of this agreement Dealer is engaged in an independent business and nothing herein contained shall be construed as reserving to Company any right to control Dealer with respect to his conduct in the performance of this agreement. Company reserves no right to exercise any control over any of Dealer's employees and all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contribution and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

8. Any tax, or the amount thereof, now or hereafter imposed, levied, or assessed by any governmental authority upon, measured by, incident to, or as a result of the transaction herein provided for, or the transportation, production, or manufacture of the goods, the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for.

9. This agreement shall not be assignable without the prior written consent of the Company. The waiver by Company of any default by Dealer shall not be deemed to be a continuing waiver of such default or the waiver of the de-

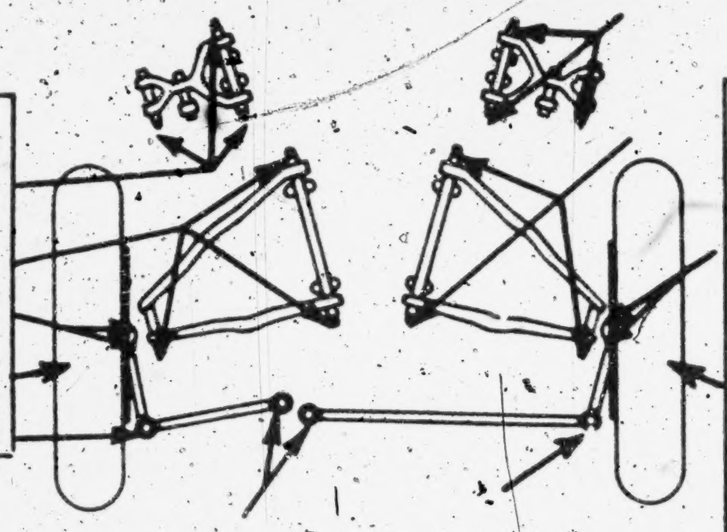
MODEL		CRANKCASE					TRANSMISSION				DIFFERENTIAL				GAS TANK	COOLING SYSTEM
Year	Model	Capacity Qts.	Hard Driving or Above +90°F. SAE	Summer SAE	Winter SAE	Winter Below +10°F. SAE	Capacity Pts. or Lbs.	Summer SAE	Winter SAE	Winter Below +10°F. SAE	Capacity Lbs.	Summer SAE	Winter SAE	Winter Below +10°F. SAE	Capacity Gals.	Capacity Qts.
1946, 47	P-15	5	20	20	20W	10W	2¾	90GL	90GL	80GL	3¼	90HY	90HY	80HY	17	15

RED NUMBERS in left side column refer to numbered Individualized Service Notes.

STUB ARROWS—Lubricate same as corresponding point on left side of chassis.

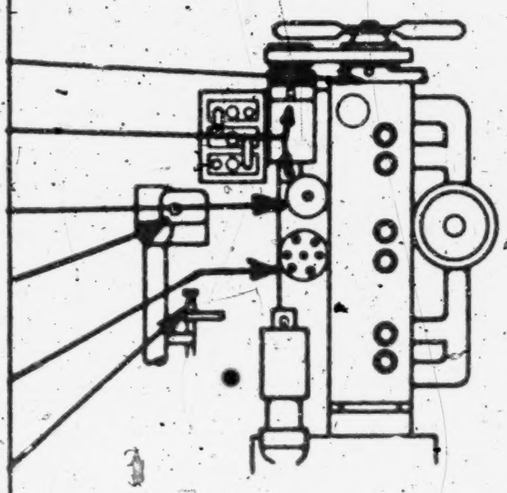
FRONT END POINTS

LUBRICANT	INTERVAL	POINT
Ch. Gr.	1000 mi.	UPPER CONTROL ARM
Ch. Gr.	1000 mi.	LOWER CONTROL ARM
Ch. Gr.	1000 mi.	KING PIN
W.B. Gr.	5000 mi. clean, repack	FRONT WHEEL BEARINGS
Ch. Gr.	1000 mi.	TIE ROD



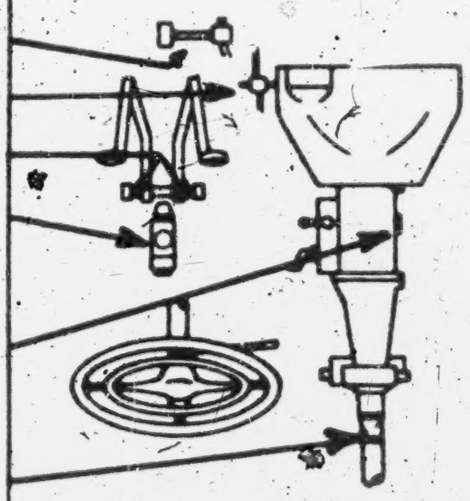
UNDER HOOD POINTS

LUBRICANT	INTERVAL	POINT
W.P. Gr. 6 strokes gun	1000 mi.	WATER PUMP
H.O. 3 or 4 drops	1000 mi.	(1) GENERATOR
M.O. See Table	1000 mi. drain, refill	CRANKCASE
Gear Gr. or G.L. SAE 90	1000 mi.	(2) STEERING GEAR
M.O. SAE 30 H.O.	1000 mi. 3 or 4 drops saturate wick	DISTRIBUTOR Oil Cup Wick Under Rotor
W.P. Gr. Wipe in groove	1000 mi.	GEAR SHIFT ROD END



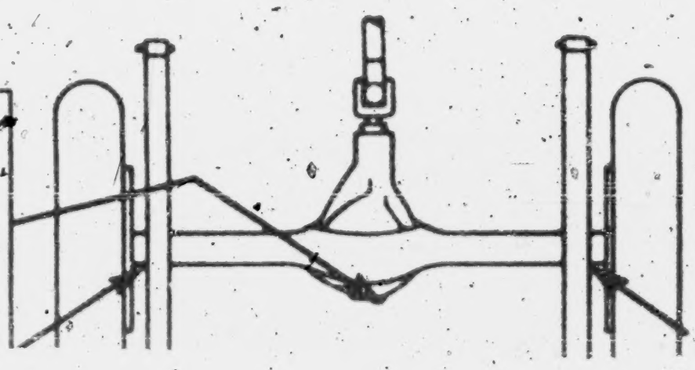
CENTER CHASSIS POINTS

LUBRICANT	INTERVAL	POINT
Ch. Gr.	1000 mi.	(3) TORQUE SHAFT
Ch. Gr.	1000 mi.	GEAR SHIFT BELL CRANK
Ch. Gr.	1000 mi.	PEDAL BEARINGS
Hydraulic Brake Fluid	1000 mi. check level	(4) HYD. BRAKE MASTER CYL.
G.L. See Table	1000 mi. check level 5000 mi. drain, flush and refill	TRANSMISSION
Inspect boot for breaks or leakage	1000 mi.	UNIVERSAL JOINT Ball & Trunnion



REAR END POINTS

LUBRICANT	INTERVAL	POINT
HY. See Table	1000 mi. check level 5000 mi. drain, flush and refill	DIFFERENTIAL
W.B. Gr.	5000	(5) REAR WHEEL



INDIVIDUALIZED SERVICE NOTES

(1) **GENERATOR:** Do not overlook rear oil hole, under sliding cover on end of housing.

(2) **STEERING GEAR:** Fill to level of plug.

(3) **TORQUE SHAFT: CAUTION:** Use low pressure (hand) gun only. Apply grease slowly.

(4) **HYDRAULIC BRAKE MASTER CYLINDER:** Maintain level within ¼ to ½ inch from bottom of filler hole. Wipe dirt from around filler hole before removing plug. **CAUTION:** Never add any fluid to system except approved brake fluid.

(5) **REAR WHEEL BEARINGS:** Install fitting to lubricate. Use low pressure (hand) gun only. Replace plug securely.

SPEEDOMETER: H.O.—10,000 mi. Apply 2 or 3 drops on wick in oil pipe where cable attaches to speedometer, behind instrument panel.

METAL COVERED REAR SPRINGS: Refill with Ch. Gr.—5000 mi. Special tool required. Apply P.O. at cover joints.

CONTROL LINKAGE: Clean and lubricate every 1000 mi. Apply M.O. at bushings and clevis pins, Ch. Gr. on exposed sliding surfaces.

MECHANIC'S JOBS

VACUUM GEAR SHIFT (Optional): Clean and lubricate every 10,000 mi.

UNIVERSAL JOINTS: W.B. Gr.—20,000 mi.

SPEEDOMETER CABLE: Lubricate every 20,000 mi.

SHOCK ABSORBERS: Inspect for loose or broken linkage, examine for leaks every 1000 mi. Require shop service when leaking.

NO LUBRICATION REQUIRED

FAN: Mounted on water pump shaft.

STARTER: Oil-less bushings.

CLUTCH RELEASE BEARING: Sealed ball brg.

REAR SPRING BOLTS, SHACKLES: Rubber bushed.

AIR CLEANERS

OIL-BATH TYPE: Service every 5000 mi., oftener under dusty conditions. Wash cup and element in solvent, drain. Fill cup to level mark with M.O. SAE 50—Summer; SAE 20—Winter. Capacity, approx. 1 pt. Clean the air tube to engine. When assembling make certain all connections are tight.

CRANKCASE FILLER CAP, and OUTLET PIPE SCREEN: Inspect frequently, clean if necessary. Wash in solvent, drain, re-oil with M.O. or P.O., drain excess.

3003



DEFENDANTS' EXHIBIT XX

ATLAS FAN BELTS, RADIATOR CAPACITY, RADIATOR HOSE

REPLACEMENT SPECIFICATIONS

PASSENGER CARS

MAKE; YEAR, AND MODEL	FAN BELT NO.	FAN BELT INSTALL CODE	RADIATOR CAPACITY IN QUARTS	RADIATOR UPPER HOSE IN INCHES	RADIATOR LOWER HOSE IN INCHES
BUICK					
1931					
-50	611	5	12	1⅜ x 3⅞	1⅜ x 3½
-60	611	5	15	1½ x 6¼	1½ x 6¼
-80, 90	618	5	19	1½ x 6¼	1½ x 6¼
1932					
-50	611	5	12	1⅜ x 4	1⅜ x 4
-60	611	5	16	1½ x 6¼	1½ x 4
-80, 90	618	5	19	1½ x 6¼	1½ x 4
1933					
-50	611	5	14	1⅜ x 6½	1⅜ x 3½
-60	611	5	16	1⅜ x 2½	1½ x 5
-80, 90	618	5	19	1⅜ x 2½	1½ x 5
1934					
-40	614	5	14	1½ x 6	1⅜ x 2¼
-50	611	5	16	1⅜ x 6½	1⅜ x 3½
-60	611	5	18	1⅜ x 2½	1½ x 5
-90	618	5	23	1⅜ x 2½	1½ x 5
1935					
-40	614	5	14	1⅜ x 6	1⅜ x 2¼
-50	611	5	16	1⅜ x 7¼	1¼ x 5¼
-60	611	5	18	1⅜ x 5½	1⅜ x 5½
-90	618	5	23	1⅜ x 4⅞	1⅜ x 5½
1936-37					
-40	614	2	13	1⅜ x 7⅜	1 Pc. MC-104
-60, 80, 90	656	2	17	1⅜ x 5¼	1 Pc. MC-105
1938					
-40	614	2	13	1⅜ x 7	1 Pc. MC-104
-60, 80, 90	610	2	17	1⅜ x 5¼	1 Pc. MC-105
1939					
-40	614	2	13	1 Pc. MC-111	1 Pc. MC-112
-60	610	2	17	1 Pc. MC-111	1 Pc. MC-113
-80, 90	610	2	17	1⅜ x 5¼	1 Pc. MC-105
1940					
-40, 50	610	2	13	1 Pc. MC-111	1 Pc. MC-112
-60, 70	663	2	16	1 Pc. MC-111	1 Pc. MC-113
-80, 90	663	2	18	:1⅞ x 5½	1 Pc. MC-105
1941					
-40, 40A, 50	628	2	13	1 Pc. MC-135	1 Pc. MC-136
-60, 70	665	2	17	1 Pc. MC-134 (cut to length)	1 Pc. MC-113
-90	665	2	18	1 Pc. MC-134 (cut to length)	1 Pc. MC-113

:Not stocked due to limited replacements

(1824)

Radiator Hose

INSTALLATION PROCEDURE

Opposite each car model listed in the specification section, are the lengths for both the upper and lower hose. Check these specifications against the connection on the car, then remove the clamps and hose. If only the upper hose is to be replaced, a part of the water must be drained, but if the lower hose is to be replaced, drain all the water.

Cut replacement hose from a three-foot length of the correct diameter, being certain that the length agrees exactly with the old one removed from the car.

Make certain the pipes leading from radiator and motor are clean. Scrape off all accumulation of rust and grease. Slip hose over the pipes and check the hose clamps. It is usually best to install a new clamp when replacing hose.

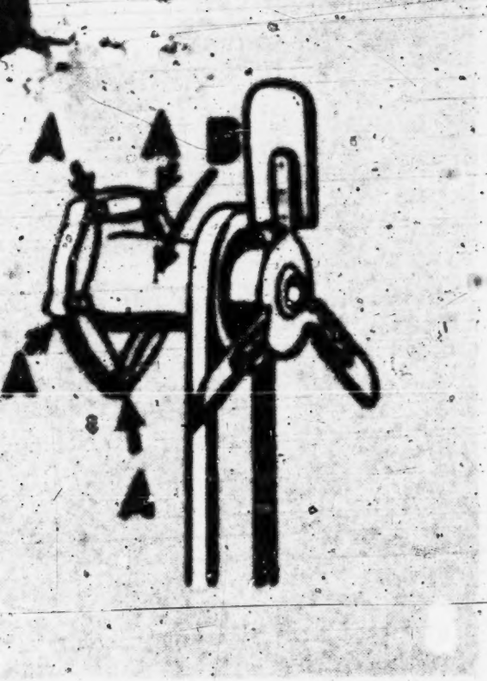


ATLAS MOLDED CURVED RADIATOR HOSE

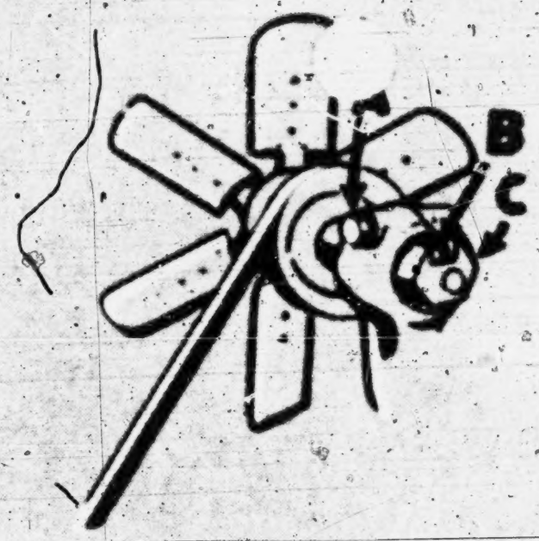
On many of the late model cars the regular type radiator hose cannot be used because it would buckle at the sharp bends necessary for proper installation and stop circulation of the cooling system.

Atlas Curved Radiator Hose because of its molded construction will not collapse or buckle. Made in various sizes and curvatures for proper installation regardless of the shape required. Correct size for car model can be determined from specification section.

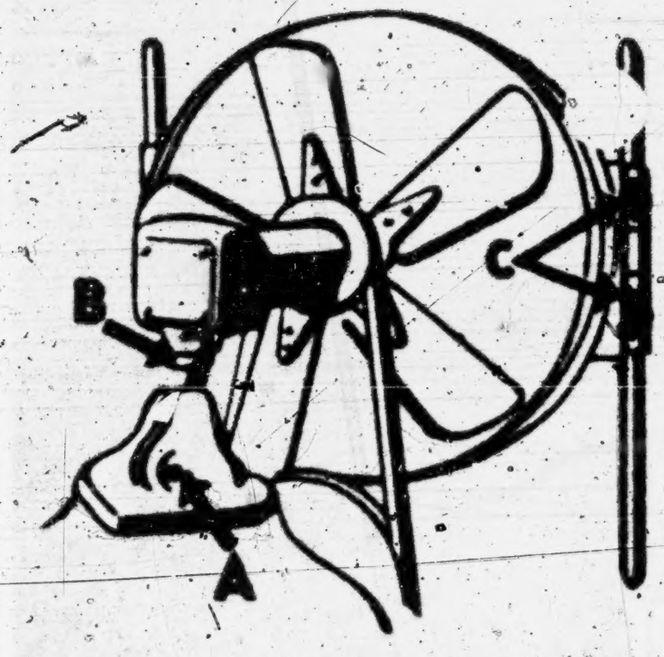
2785



The eccentric type of adjustment. Loosen bolts A and turn pump to raise or lower fan. This same adjustment is used on Packard cars equipped with a dual belt assembly.



9 Another type of eccentric adjustment. Loosen bolt A which holds the sleeve enclosing shaft, loosen bolt B and turn nut C to raise or lower assembly. This adjustment is used on Pierce-Arrow cars equipped with a dual belt assembly.



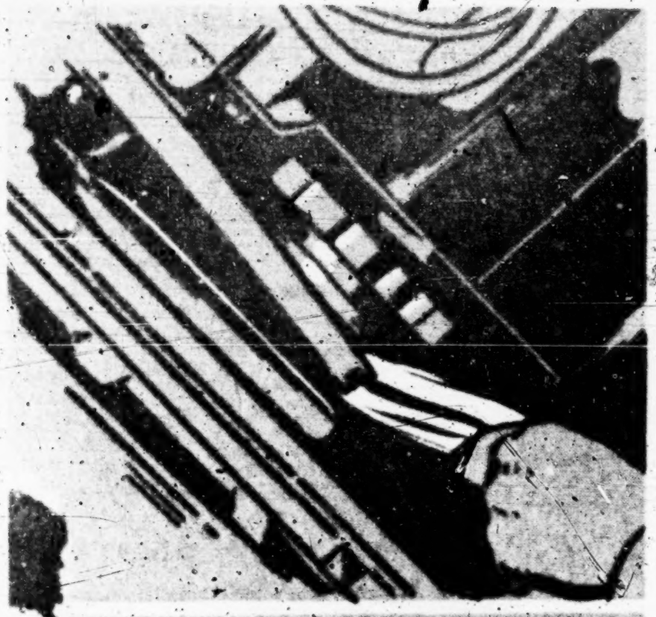
10 Another type of post adjustment similar to Illustration 7. Fan rests on post B enclosed in sleeve. Loosen bolt A to raise or lower assembly. Letter C shows shroud adjustment. Loosen nuts and raise or lower shroud to prevent fan blades from touching it.

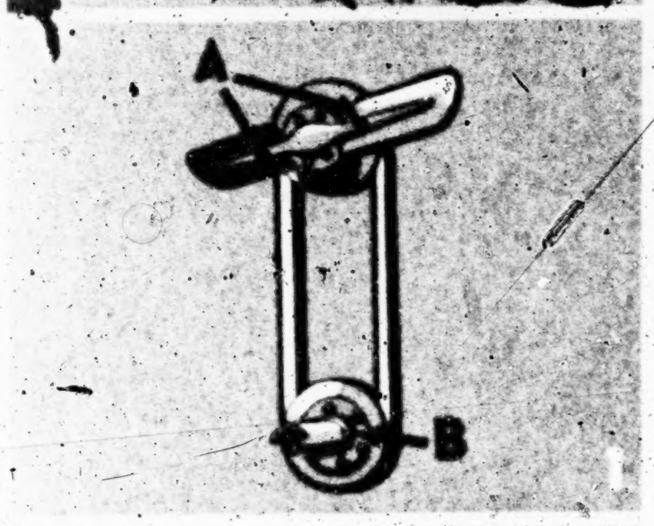


Test fan belt for proper tension. Must be loose enough to permit deflection of at least 1 inch.

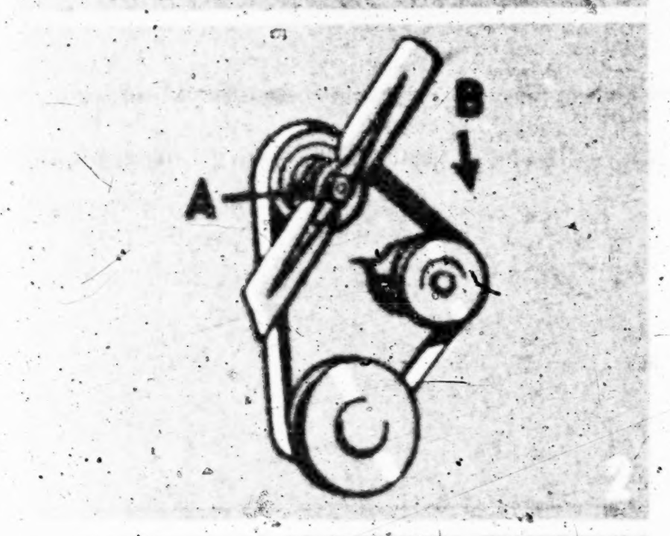
NOTE: That part of the illustrations showing different methods of removing fan blades should be referred to only when it is absolutely necessary to remove the blades. Under no circumstances are the blades to be removed until you are satisfied that the belt cannot be applied without this operation.

Fan Belt

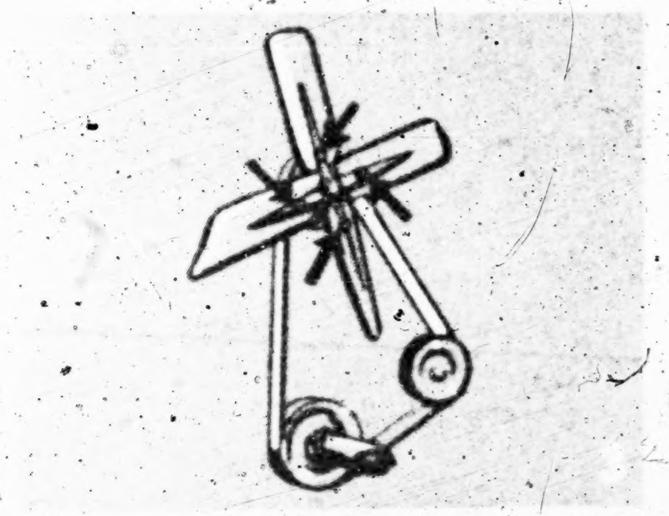




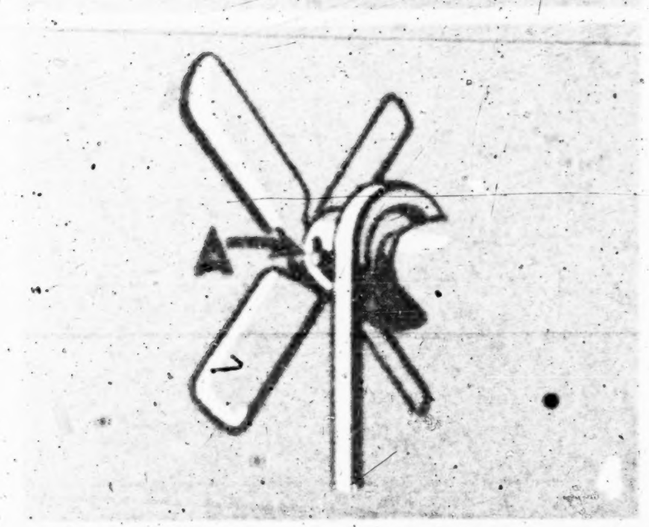
1



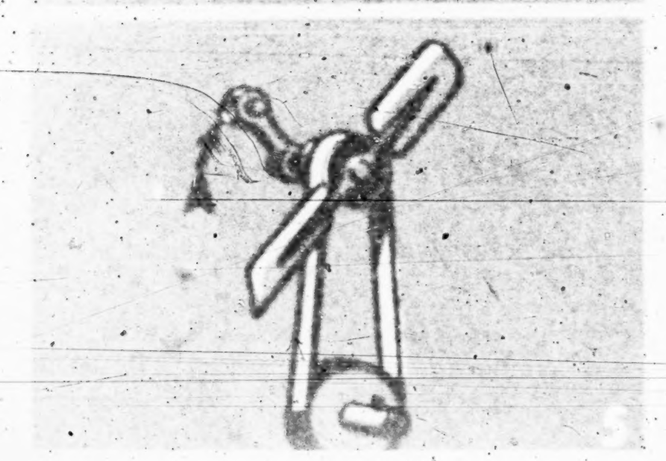
2



3



4



5

Place folded rag under fan belt to help work it onto pulley.

1 Letter A shows the two nuts to be removed if it is necessary to remove blades. Letter B shows the nut which holds the crank stub. On some model cars this stub projects so far that it must be removed to apply the belt. To remove stub, set punch or screw driver against nut and tap with hammer.

2 Shows the three-pulley drive with generator arm adjustment. Letter A indicates nut on outside of fan. If necessary to remove fan blades, first remove cotter pin and nut. Letter B shows adjustment on arm. Loosen nut and raise or lower generator for proper tension.

3 Showing another three-pulley is for reference only when it is necessary to remove the fan blades on a fan of this type. The arrows point to nuts to be removed.

4 Shows the split-pulley type of adjustment. Loosen nut A and turn fan forward or backward to open pulley. The flanges of the pulley will separate and belt will drop into groove allowing removal from lower pulley.

5 A popular two-pulley assembly that is easy to adjust. Loosen nut at A and raise or lower entire fan assembly.

INSTALLATION PROCEDURE

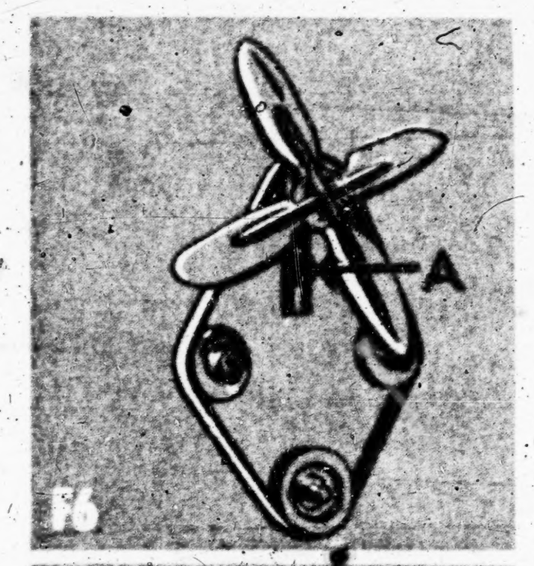
Following illustrations demonstrate the various types of fan belt assemblies. The reference charts include a code number which refers to the illustration covering installation.

F6 Assembly in this illustration is for a Ford V8 and is raised or lowered by loosening nut A. On Lincoln Zephyr, Mercury and some Ford V8 Models, the fan blades are located on drive shaft; however, adjustment is still made at nut A. 1942 V8 equipped with two belts. To adjust loosen three nuts at point A.

6 Entire fan assembly is raised or lowered by loosening nut A. Several variations of this adjustment are in use.

6A Shows assembly on 1941 and 1942 6 cyl. Ford. Loosen bolts A and B to release tension on both belts. Unfasten clips on distributor cap C to remove generator belt. 1942 fan blades are located on water pump pulley, and for 1941 on drive pulley.

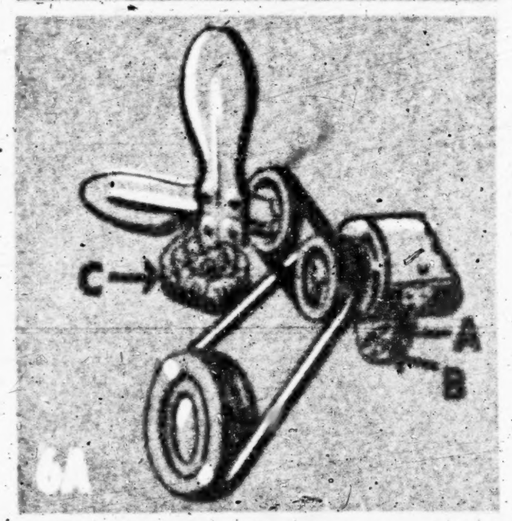
7 Known as the post adjustment. The fan assembly rests on a post set in a sleeve. To adjust loosen bolt A and raise or lower entire assembly. On some model cars the generator rests on a post at the top of the motor.



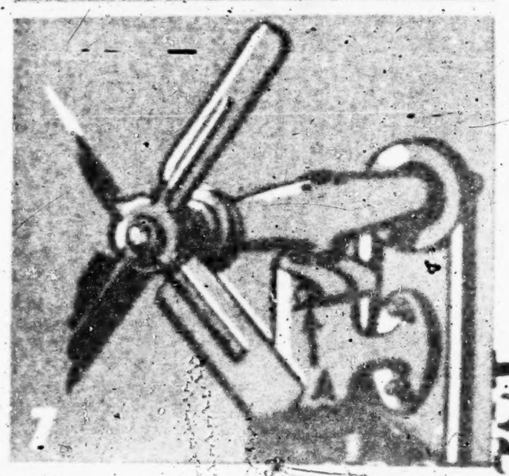
F6



6



6A



7

1826
2786

DEFENDANTS' EXHIBIT YY

CHEVRON

ATTRACTING CUSTOMERS

SECTION ONE

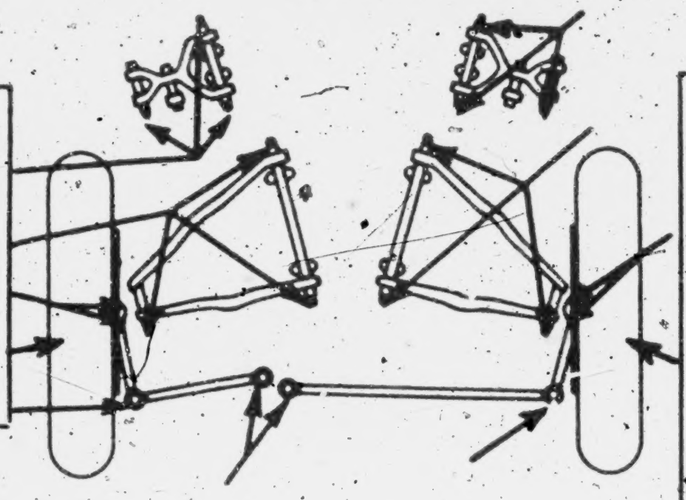
ATTRACTING CUSTOMERS

RED NUMBERS in left-side column refer to numbered Individualized Service Notes.

STUB ARROWS—Lubricate same as corresponding point on left side of chassis.

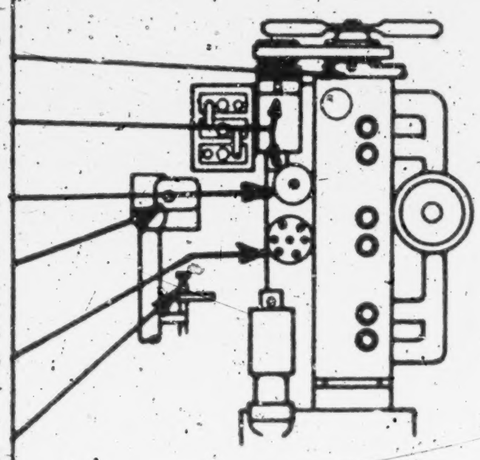
FRONT END POINTS

LUBRICANT	INTERVAL	POINT
Ch. Gr.	1000 mi.	UPPER CONTROL ARM
Ch. Gr.	1000 mi.	LOWER CONTROL ARM
Ch. Gr.	1000 mi.	KING PIN
W.B. Gr.	5000 mi. clean, repack	FRONT WHEEL BEARINGS
Ch. Gr.	1000 mi.	TIE ROD



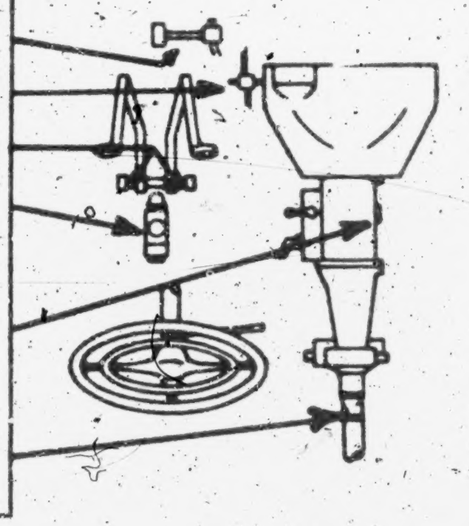
UNDER HOOD POINTS

LUBRICANT	INTERVAL	POINT
WP. Gr. 6 strokes gun	1000 mi.	WATER PUMP
H.O. 3 or 4 drops	1000 mi.	(1) GENERATOR
M.O. See Table	1000 mi. drain, refill	CRANKCASE
Gear Gr. or G.L. SAE 90	1000 mi.	(2) STEERING GEAR
M.O. SAE 30 H.O.	1000 mi. 3 or 4 drops saturate wick	DISTRIBUTOR Oil Cup Wick Under Rotor
WP. Gr. Wipe in groove	1000 mi.	GEAR SHIFT ROD END



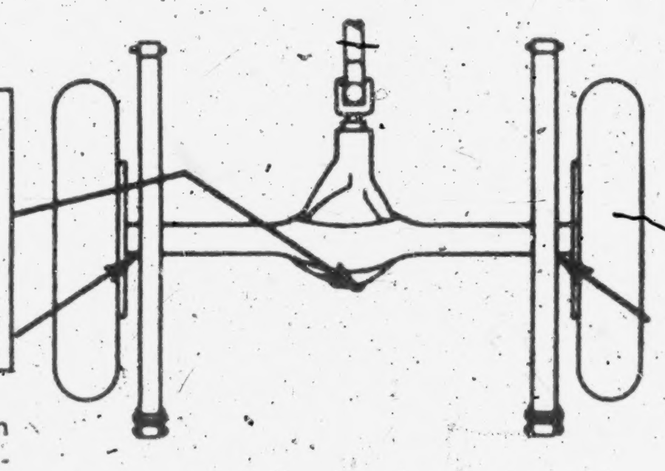
CENTER CHASSIS POINTS

LUBRICANT	INTERVAL	POINT
Ch. Gr.	1000 mi.	(3) TORQUE SHAFT
Ch. Gr.	1000 mi.	GEAR SHIFT BELL CRANK
Ch. Gr.	1000 mi.	PEDAL BEARINGS
Hydraulic Brake Fluid	1000 mi. check level	(4) HYD. BRAKE MASTER CYL.
G.L. See Table	1000 mi. check level 5000 mi. drain, flush and refill	TRANSMISSION
Inspect boot for breaks or leakage	1000 mi.	UNIVERSAL JOINT Ball & Trunnion



REAR END POINTS

LUBRICANT	INTERVAL	POINT
HY. See Table	1000 mi. check level 5000 mi. drain, flush and refill	DIFFERENTIAL
W.B. Gr. 6 strokes gun	5000 mi.	(5) REAR WHEEL BEARINGS



COOLING SYSTEM: Drain at 2 points. Cock on bottom of radiator is at center, front. Cock on cylinder block is at left side, center.

AUTO HOIST ADAPTER

All Models — Use Method "B"

MUFFLER AND EXHAUST PIPE RESTRICT CLEARANCE

Lift ends must be flush with floor.
Remove all obstructions on lift rails.
Inflate tires fully and drive car on 2" x 12" planks if needed for additional clearance.

DRIVE ON SLOWLY AND APPLY BRAKES SLOWLY

LUBRICANT ABBREVIATIONS

M.O.—RPM Compounded Motor Oil.
G.L.—RPM Gear Lubricant (Compounded).
HY.—RPM Hypoid Lubricant.
H.O.—RPM Handy Oil.
P.O.—RPM Penetrating Oil.
Ch.Gr.—RPM Chassis Grease.
W.B.Gr.—RPM Wheel Bearing Grease.
Gear Gr.—RPM Gear Grease.
WP. Gr.—RPM Water Pump Grease.

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INDIVIDUALIZED SERVICE NOTES

(1) **GENERATOR:** Do not overlook rear oil hole, under sliding cover on end of housing.

(2) **STEERING GEAR:** Fill to level of plug.

(3) **TORQUE SHAFT: CAUTION:** Use low pressure (hand) gun only. Apply grease slowly.

(4) **HYDRAULIC BRAKE MASTER CYLINDER:** Maintain level within ¼ to ½ inch from bottom of filler hole. Wipe dirt from around filler hole before removing plug. **CAUTION:** Never add any fluid to system except approved brake fluid.

(5) **REAR WHEEL BEARINGS:** Install fitting to lubricate. Use low pressure (hand) gun only. Replace plug securely.

SPEEDOMETER: H.O.—10,000 mi. Apply 2 or 3 drops on wick in oil pipe where cable attaches to speedometer, behind instrument panel.

METAL COVERED REAR SPRINGS: Refill with Ch. Gr.—5000 mi. Special tool required. Apply P.O. at cover joints.

CONTROL LINKAGE: Clean and lubricate every 1000 mi. Apply M.O. at bushings and clevis pins, Ch. Gr. on exposed sliding surfaces.

MECHANIC'S JOBS

VACUUM GEAR SHIFT (Optional): Clean and lubricate every 10,000 mi.

UNIVERSAL JOINTS: W.B. Gr.—20,000 mi.

SPEEDOMETER CABLE: Lubricate every 20,000 mi.

SHOCK ABSORBERS: Inspect for loose or broken linkage, examine for leaks every 1000 mi. Require shop service when leaking.

NO LUBRICATION REQUIRED

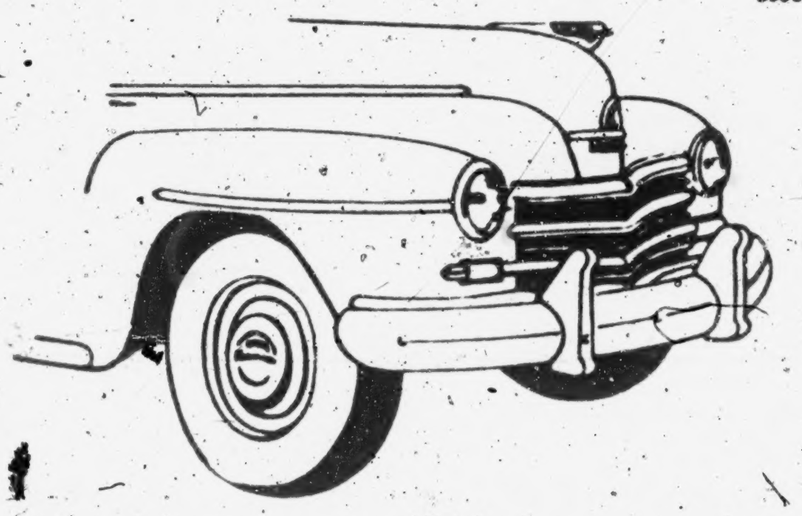
FAN: Mounted on water pump shaft.
STARTER: Oil-less bushings.
CLUTCH RELEASE BEARING: Sealed ball brg.
REAR SPRING BOLTS, SHACKLES: Rubber bushed.

AIR CLEANERS

OIL-BATH TYPE: Service every 5000 mi., oftener under dusty conditions. Wash cup and element in solvent, drain. Fill cup to level mark with M.O. SAE 50—Summer; SAE 20—Winter. Capacity, approx. 1 pt. Clean the air tube to engine. When assembling make certain all connections are tight.

CRANKCASE FILLER CAP, and OUTLET PIPE SCREEN: Inspect frequently, clean if necessary. Wash in solvent, drain, re-oil with M.O. or P.O., drain excess.

3083



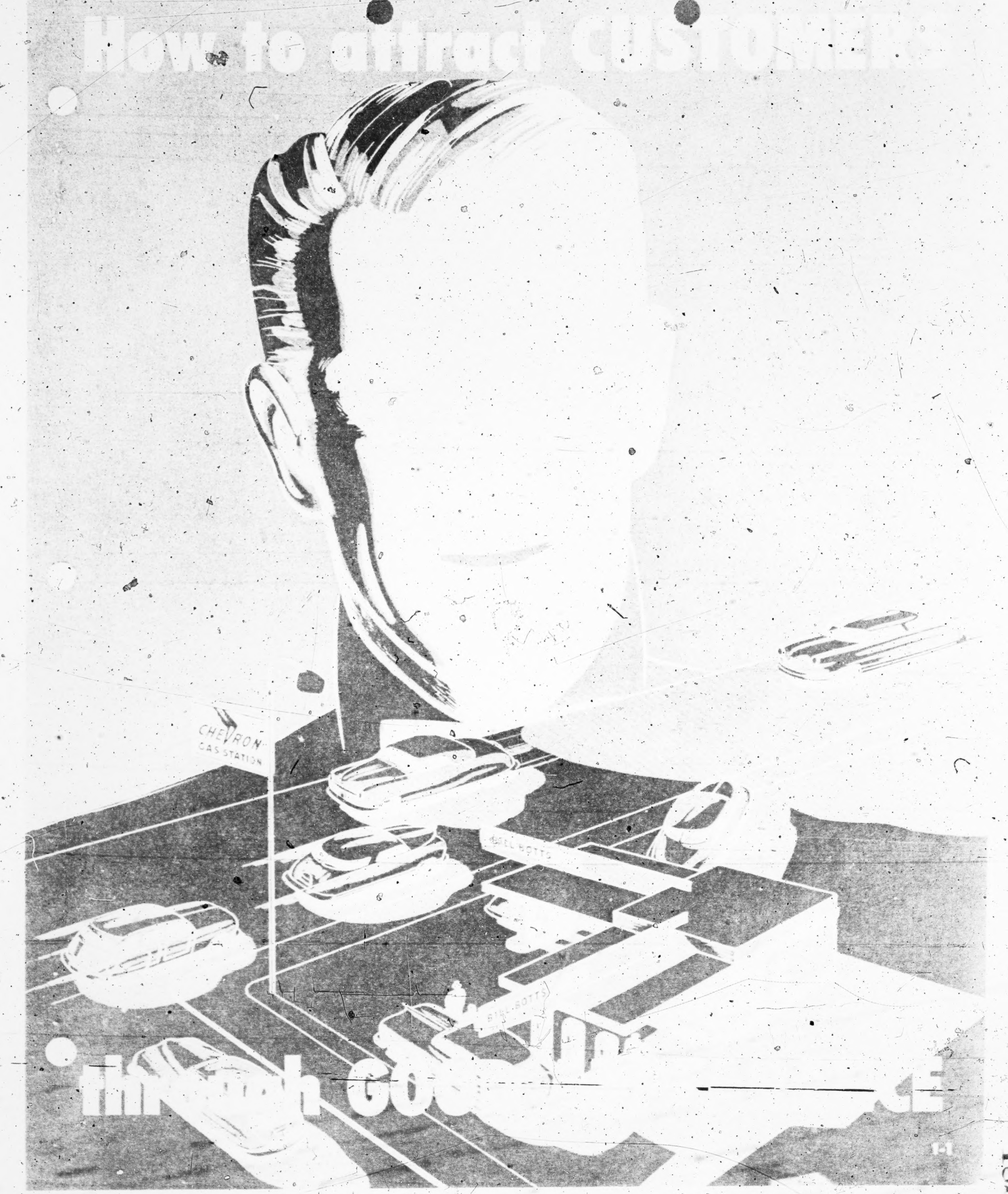
1946 1947 P-15 PLYMOUTH

YEAR and MODEL are usually shown on State License Registration Card. Model designation (P-15), followed by the engine No., is stamped on left side of block between numbers 1 and 2 cylinders.

(1823) 2783

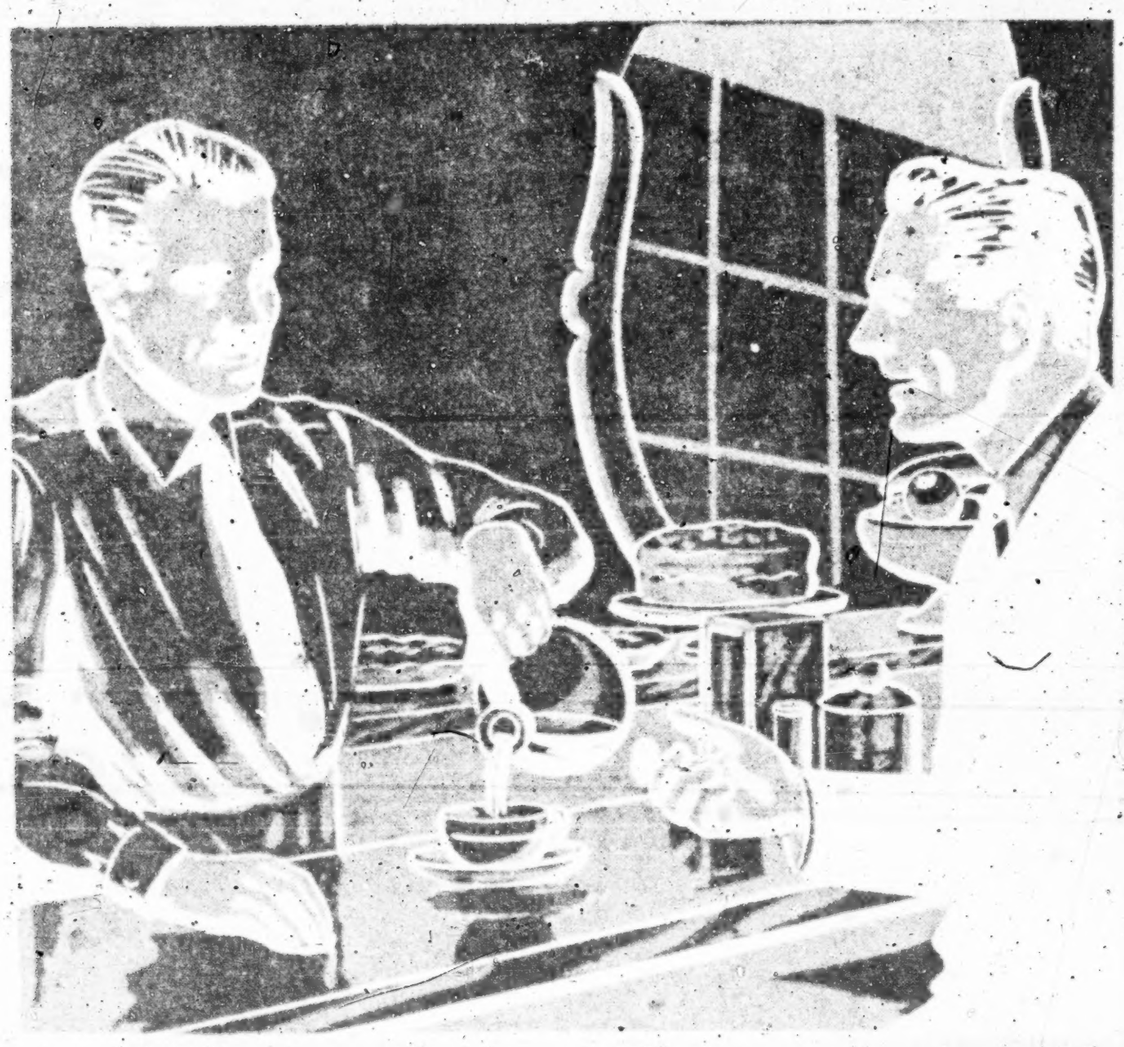
1823

how to attract customers



think

WHICH WOULD YOU CHOOSE?





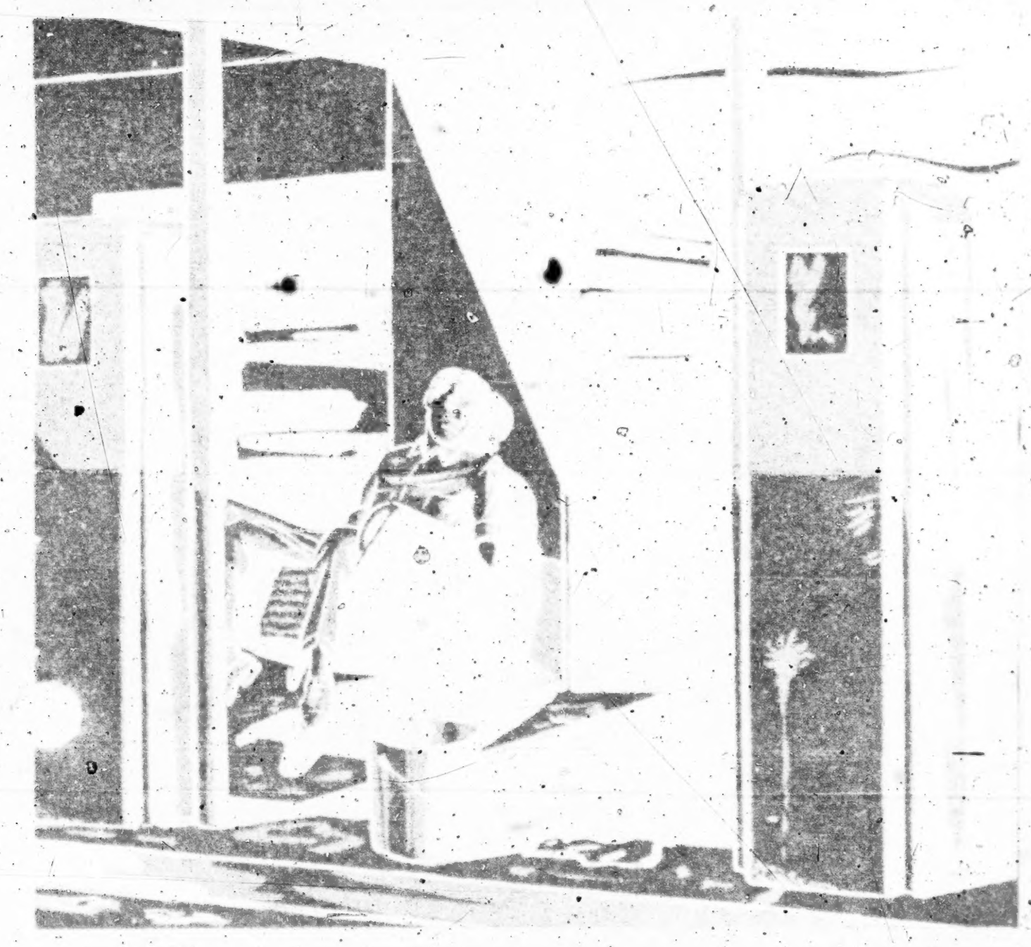
1829

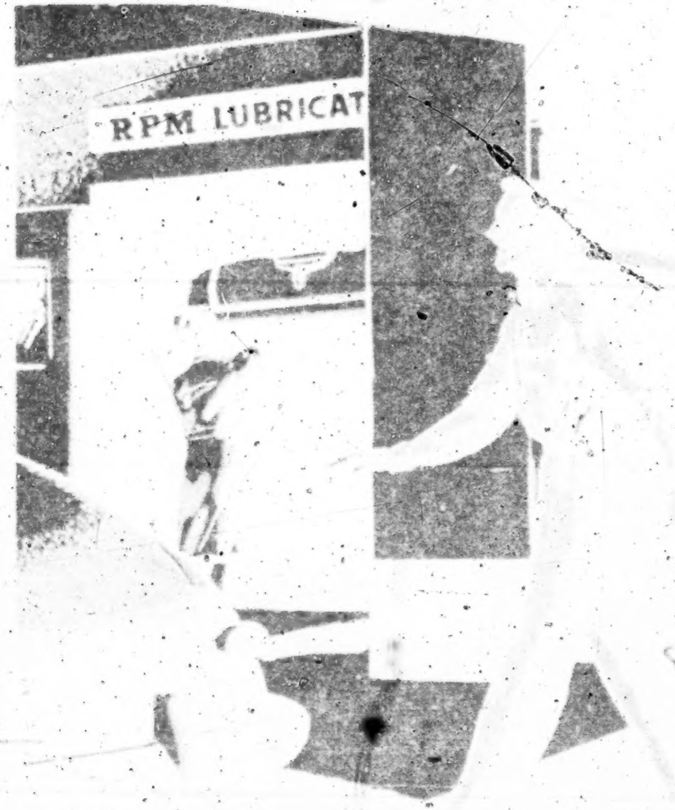
2789

FIRST IMPRESSIONS



HOW DO YOU LOOK ON THESE POINTS? (CHECK IT THROUGH ON THE FOLLOWING PAGES)





SUCCESSFUL STATIONS LOOK THE PART

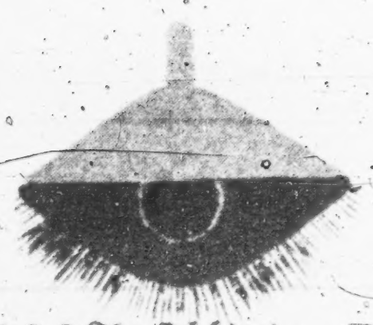
1830

Use plenty of LIGHT to pull them in . . .

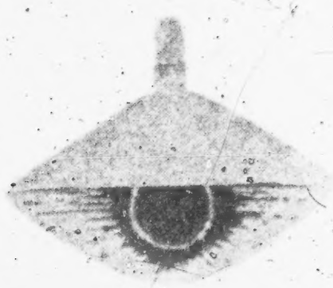
Full illumination makes your station stand out . . . tells motorists you're really open for business. To the night driver your brightly lighted station looks safe and friendly.



BILL BOTTS



100% Efficient



50% Efficient

Replace burned-out globes

Stock spare globes and fuses

Use globes of adequate wattage

Profit Note:

Be sure to stay open as long as there is *pay-traffic* on the road!

Check Lighting System Regularly

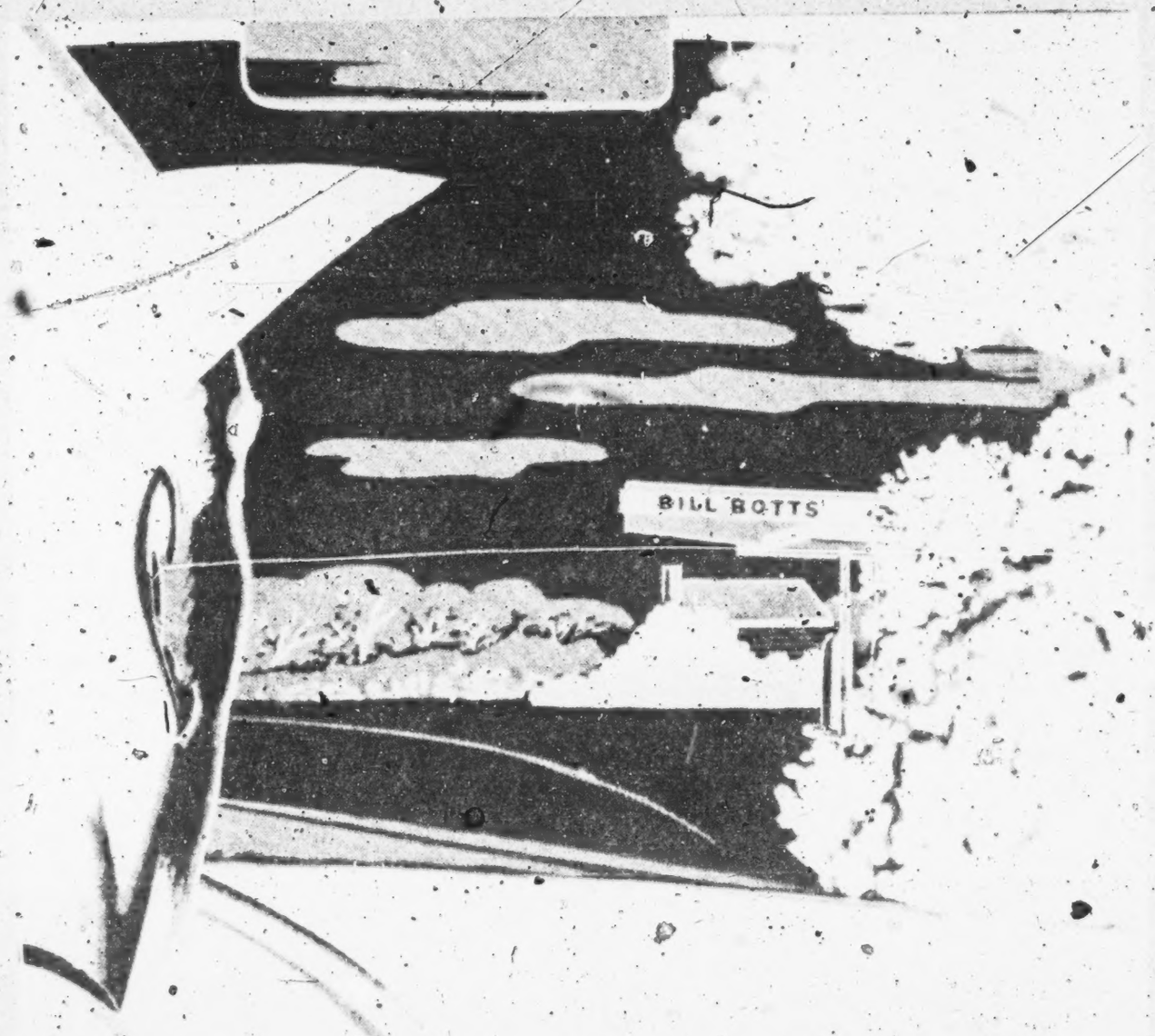
Dust, dirt and exhaust gases leave a film which sharply cuts down the amount of light. Clean globes and reflectors regularly.

LIGHT SELLS FOR YOU!

Leaving lights out to save pennies is like hanging out a "closed" sign. Extra business pulled in by good lighting more than pays the light bill.

Easy to SEE



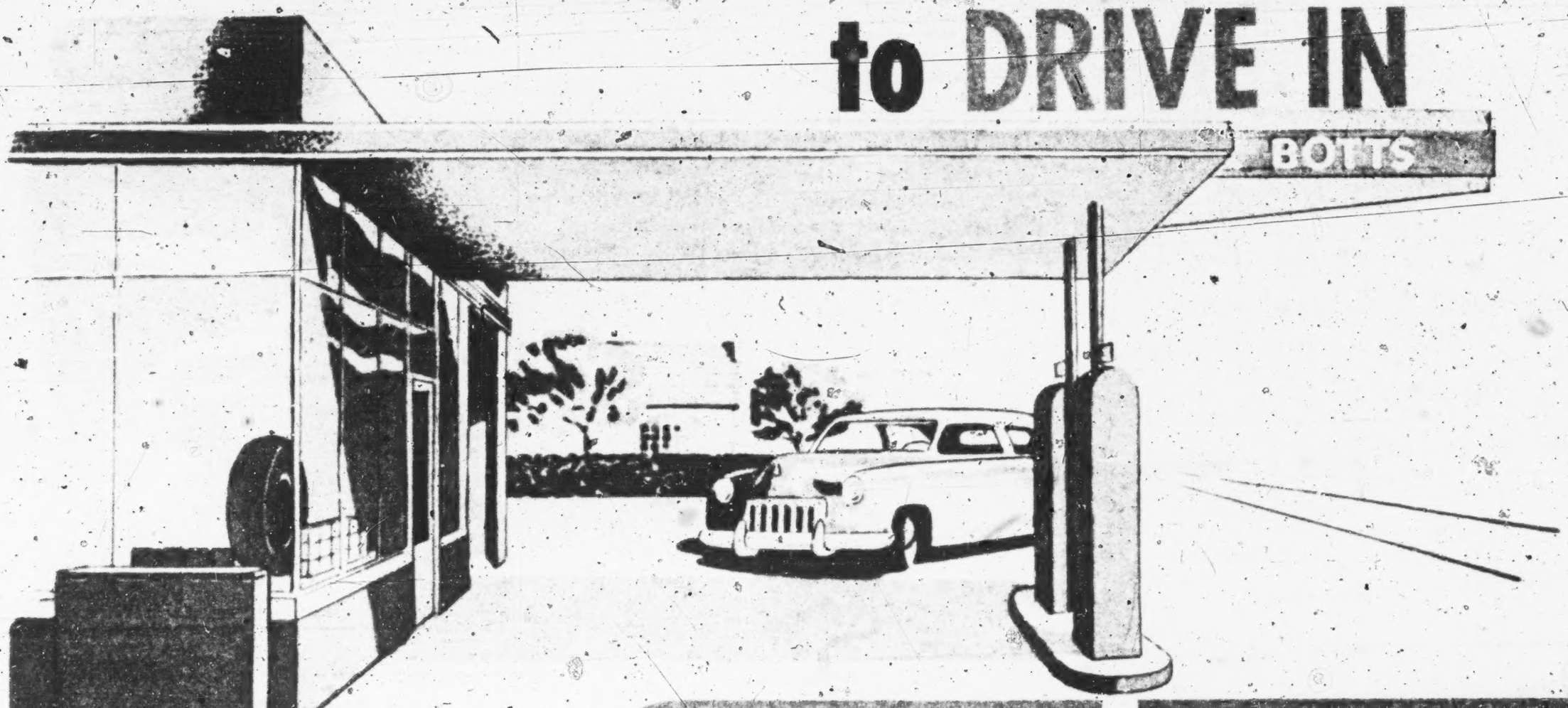


CHEVRON
GAS STATION

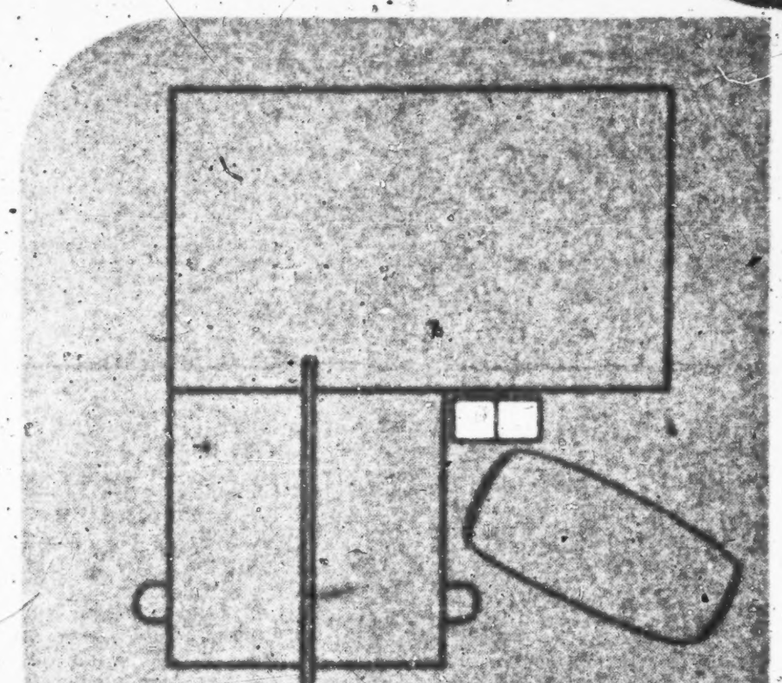
KEEP THE CHEVRON SIGN LIGHTED

2791

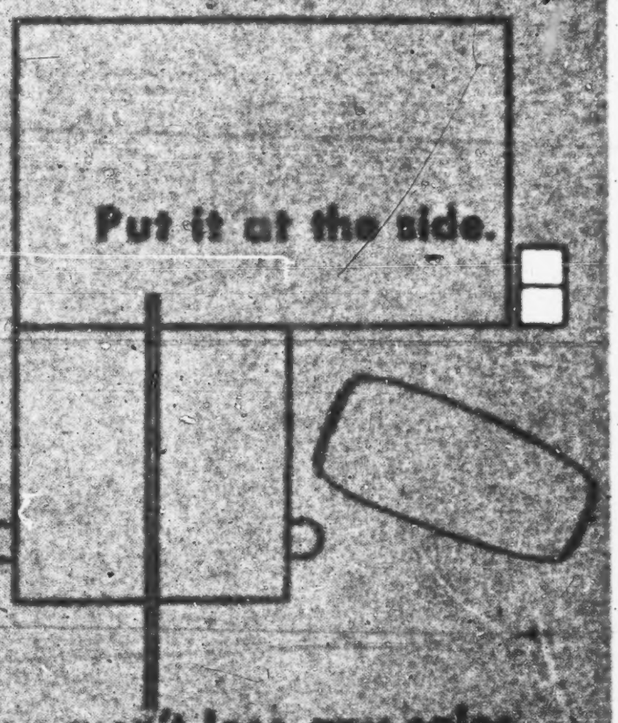
Make it easy for customers to DRIVE IN



Give customers a clear passage, plenty of space for turning and backing. Anything that sticks out into driveways and service area looks like an obstacle even if it isn't. Place your signs to catch the customer's eye, but keep them out of his way. An overhead sign may leave inches to spare, but it "shrinks" clearance enough to make drivers apprehensive.

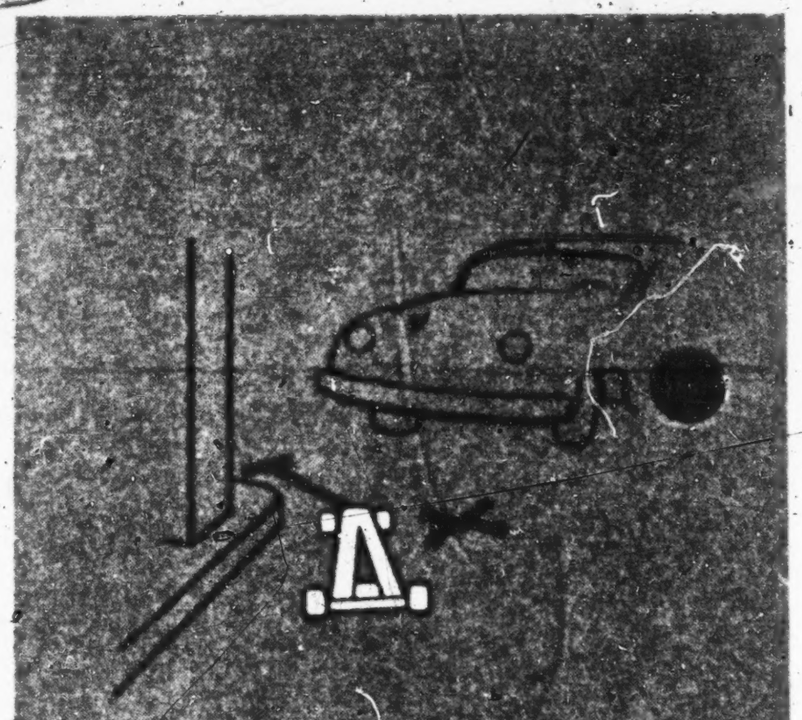


Your soft-drink dispenser looks bulky to approaching customers.

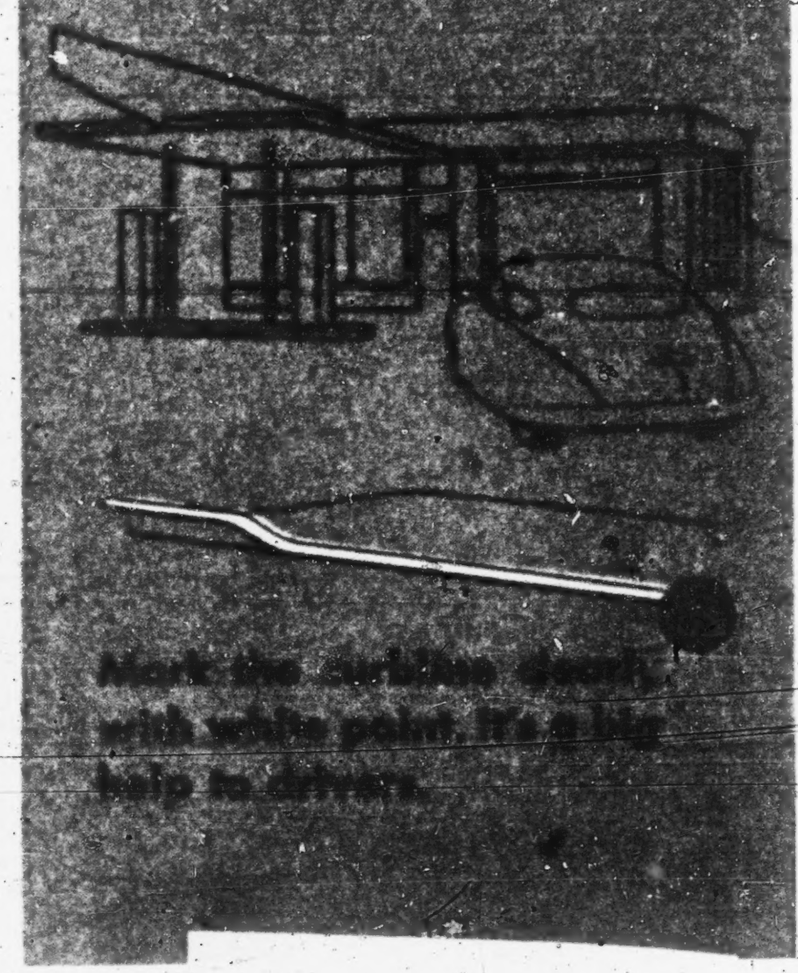


Put it at the side.

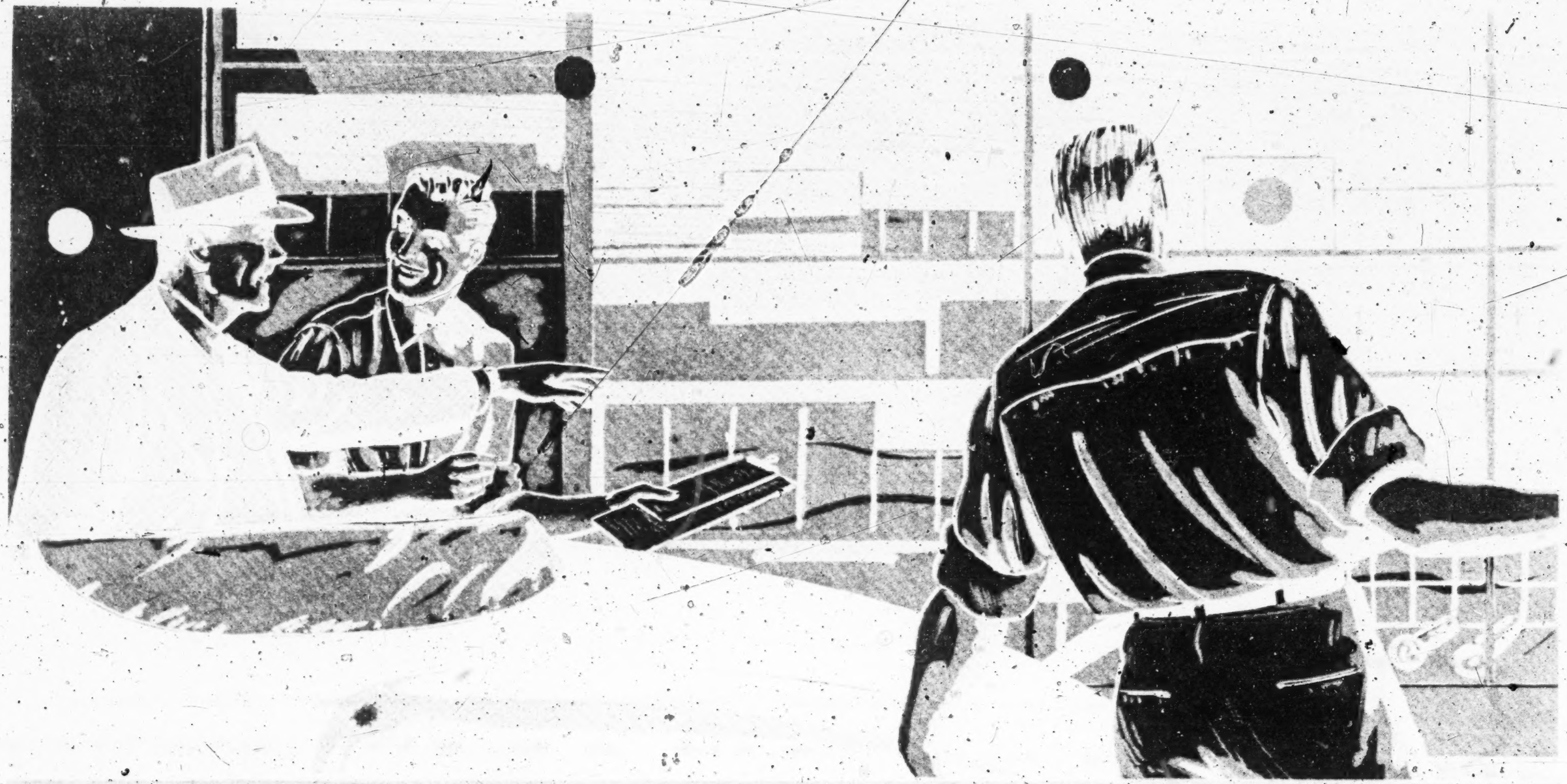
You won't lose any sales. You will make cautious drivers feel safer.



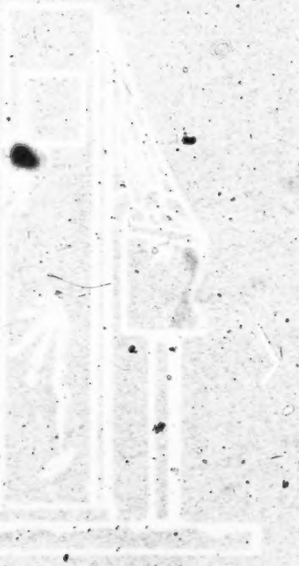
Tools in the driveway cause accidents . . . look like trouble to your customers. Put them away.



Mark the curbing clearly with white paint. It's a big help to drivers.



PUMP BLOCK




Oil Filter

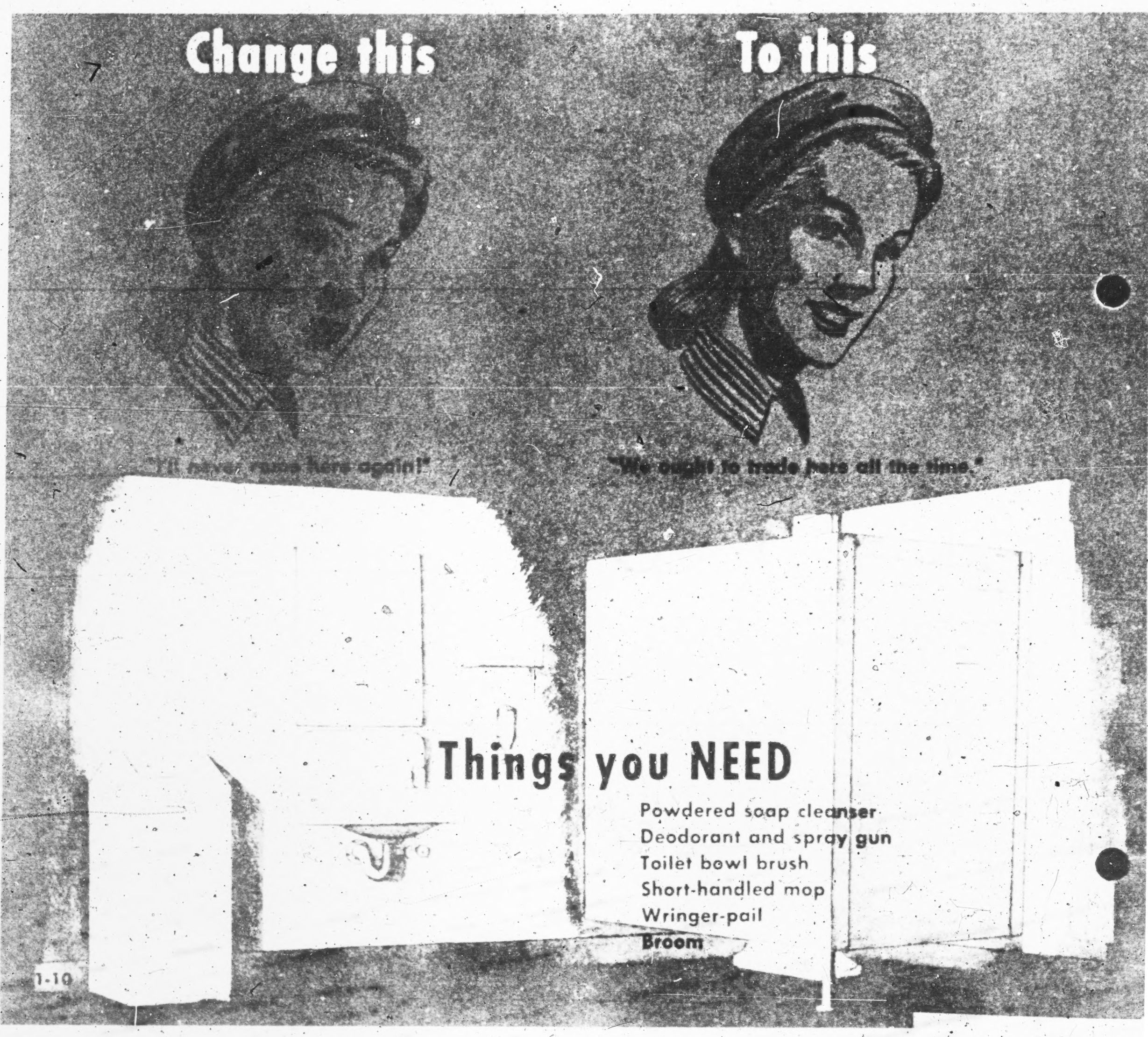
WINDOWS

Tips to Build Sales

DRESS UP

If your restroom makes a HIT . . .

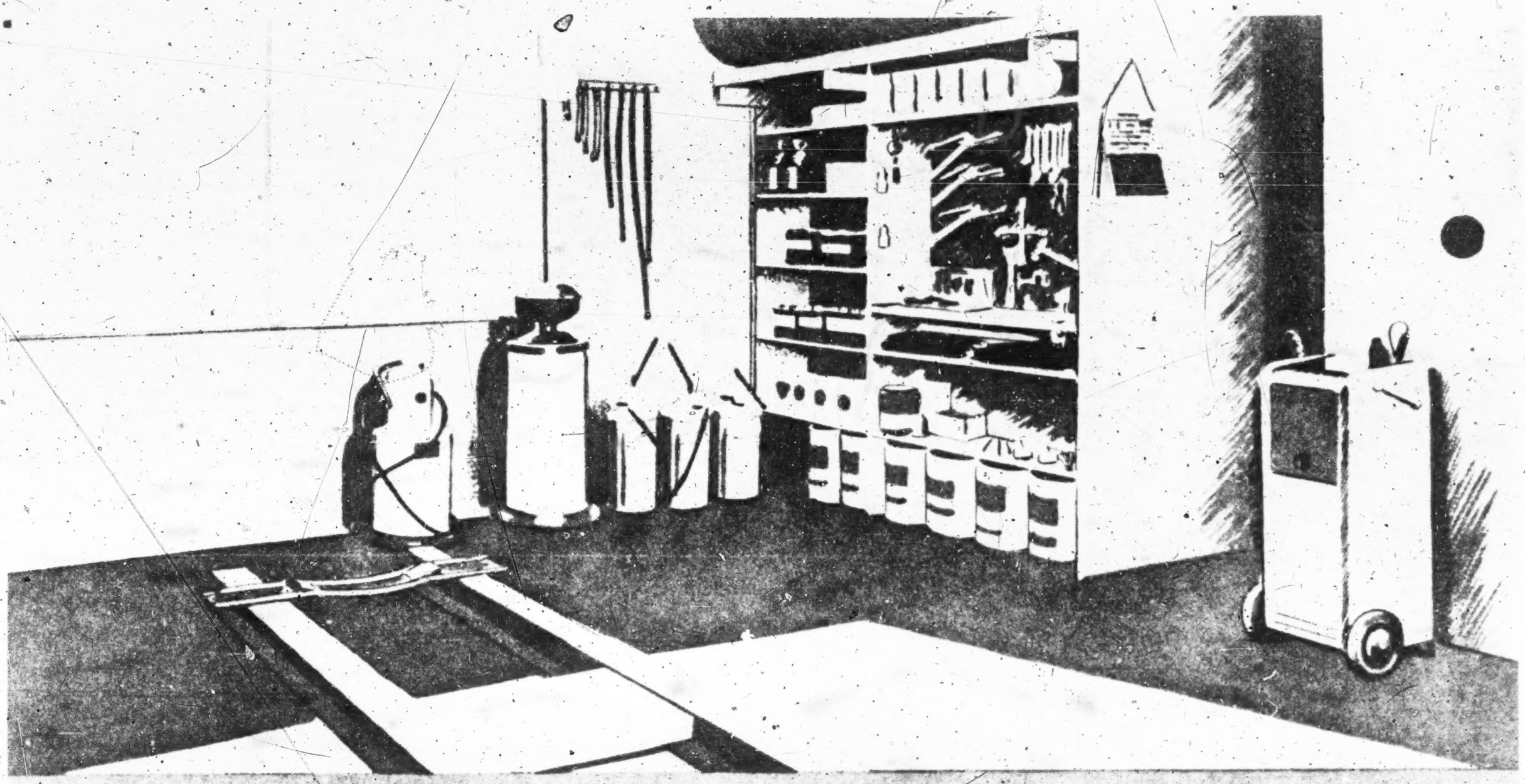
Customer reaction to restroom appearance is critical and immediate. To show you welcome their business provide customers with clean well-equipped restrooms. They will remember your thoughtfulness & tell others about it



. . your station makes a FRIEND



Spruce up your restrooms first thing every morning and once an hour throughout the day



Make your lube unit say—"EXPERT"

Marks of expert service—Separate guns for every major use, each clearly identified . . . clean tools in their place . . . show customers you know your job.

Products of proven performance—Motorists know—and trust—RPM lubricants. The display tells them you use the best . . . that your stock is complete.

Clean, reliable unit—A clean, orderly unit indicates clean work, careful workmanship . . . assures the customer his car will be returned in tiptop shape.

After every job—sweep and remove oil from lube hoist and floor.
As you work—keep a clean rag handy to wipe equipment and hands.
If you clean up as you go, the final clean-up is easier.

Powered by Bluefrog Marketing and Communications Inc.

Display Your Merchandise Effectively

1. Clean basin with powdered soap cleanser. Polish faucet and fixtures. Use plunger when necessary to free trap.

2. Clean toilet seat, including part underneath where moisture collects. Clean toilet bowl with brush inside and out—spray with disinfectant. Remove stains with powdered cleanser.

3. Wash water stains, finger marks, mop-stains and dust from walls and woodwork with soap and water. Wipe with dry cloth. Remember doors and doorknobs.

4. Wash the mirror as you do a windshield.

5. Stock containers with soap, tissue, paper towels and seat covers. Wash waste basket and sanitary waste cans.

6. Mop floor with clean water. Pay particular attention to corners and base of urinal. Wash mop and bucket frequently.

Keep them looking FRESH and CLEAN

Check supplies at regular intervals
Touch up spots . . . wipe the mirror.
Keep wastebasket and sanitary can emptied
See that all plumbing is in working order

Give the whole station EYE-APPEAL

Once they're at the pumps, most customers take a look around. At building . . . yard . . . driveways . . . everything. If they're sold on the *looks* of your station, it's easier to sell them your *service*.

The LITTLE THINGS cinch it!



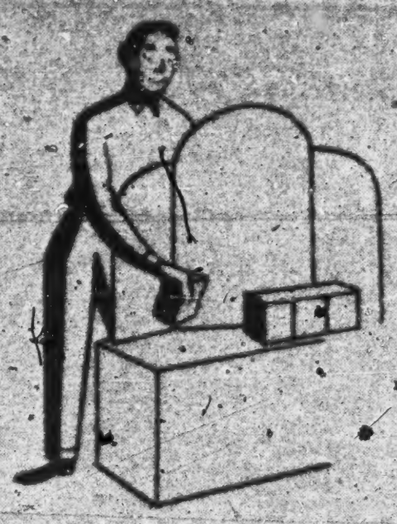
Empty the Trash Can



Hose Down the Yard



Brighten Up Paintwork



Change Displays Often



Water and Trim Shrubs



Wash Windows Weekly

What work is to be done?



Who is to do it?

How is it to be done?

When should it be done?

Put it into ACTION

Follow it every day



Wipe off pumps

Sweep sidewalk

Clean restrooms thoroughly

Sweep yard and driveways



Straighten up salesroom

Sweep floor

Dust and straighten displays and posters

Wash finger marks from woodwork



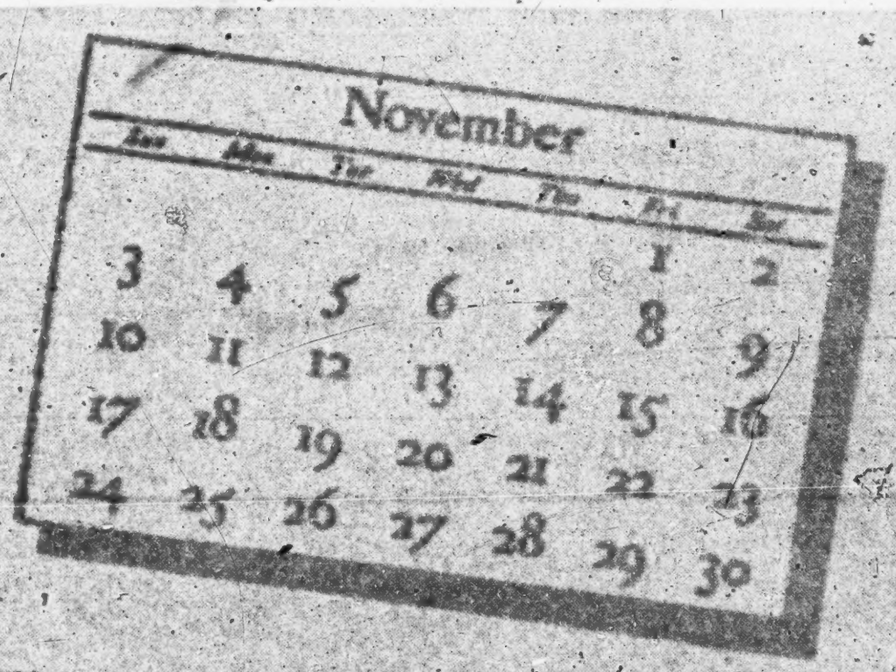
Sweep lube bay

Fill lube guns

Clean grease equipment

Straighten up shelves and workbench

Schedule these regularly



Wash windows at least once a week.

Clean lights and reflectors monthly.

Water shrubs at specified times. Trim when necessary.

Wipe off lower part of building once a week; scrub with soap and water once a month.

Change window and salesroom displays at least once a month. Vary the emphasis by featuring different items.

Clear accumulated junk from storage space, cabinets, lockers, drawers.

Inspect as you clean

Check product decals. Change before they look wornout.

Go over your signs and posters. Get replacements before their appearance spoils their sales value.

Keep fire extinguishers in good condition. See manufacturer's recommendations.

Spot equipment wear before it gets serious.



YOUR appearance sells, too

Customers judge a man's ability by the way he looks. If they like your appearance, they will have more confidence in the things you sell.

Shave every morning.
Keep hair trimmed and combed.
Keep hands clean.
Keep shoes clean and polished.
Wear suitable clothes . . . keep them neat and clean.

UNIFORMS add snap to your station

1-16

2803

1843

Keep CLEAN on the job

Whether your station is busy or quiet, customers always expect you to look neat. By taking a few simple precautions, you can wear your uniforms longer and look your best for every customer. No chance of mussing up their cars, either!

Little touches make BIG impressions



One little detail
can make a steady
customer out of
a first-time caller.



Just one neglected item
can sour a visitor on
your whole
station.

PLAY IT SAFE! Aim your housekeeping at the fussiest motorist on the road. Then it's sure to please everybody.

1-14

2801

At all times, avoid touching equipment with dirty hands, or putting tools and equipment away without wiping.

When dispensing gas and water, stand well back from the car and keep the hose away from your clothes.

When checking oil, avoid rubbing against fender.

When wiping windshield, keep clear of the car.

Wear a service coat in the lube unit.

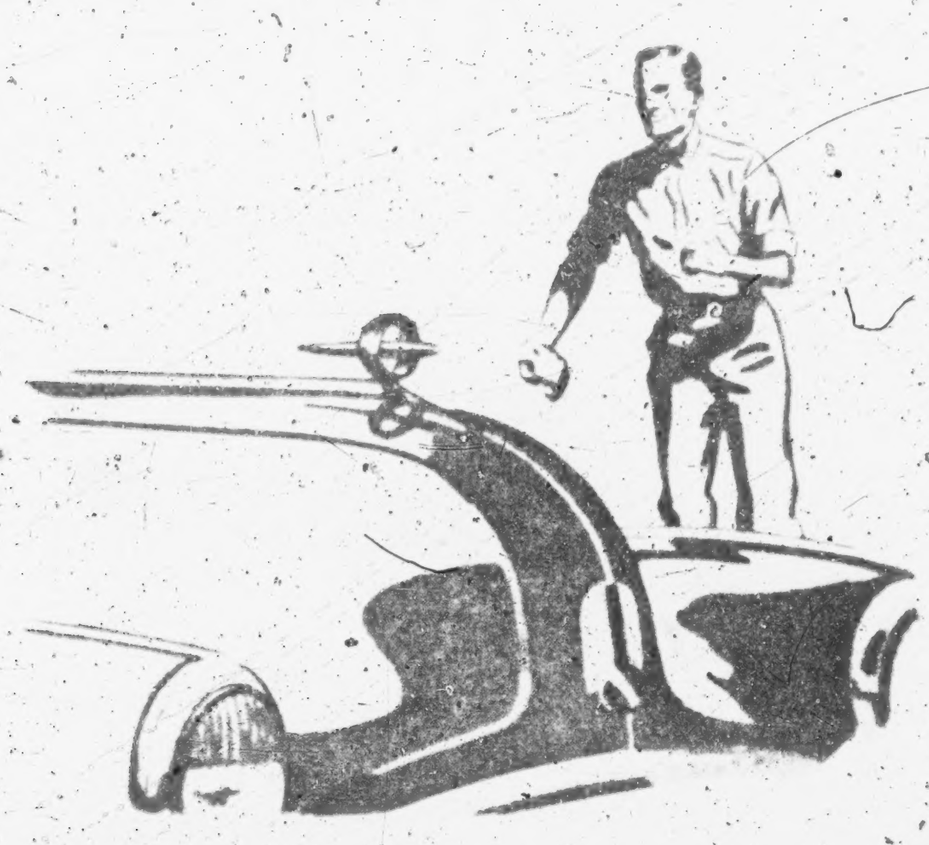
Sell YOURSELF first



If customers are sold on you . . . your appearance . . . your way of doing things . . . you're over the first hurdle and on your way to sales.

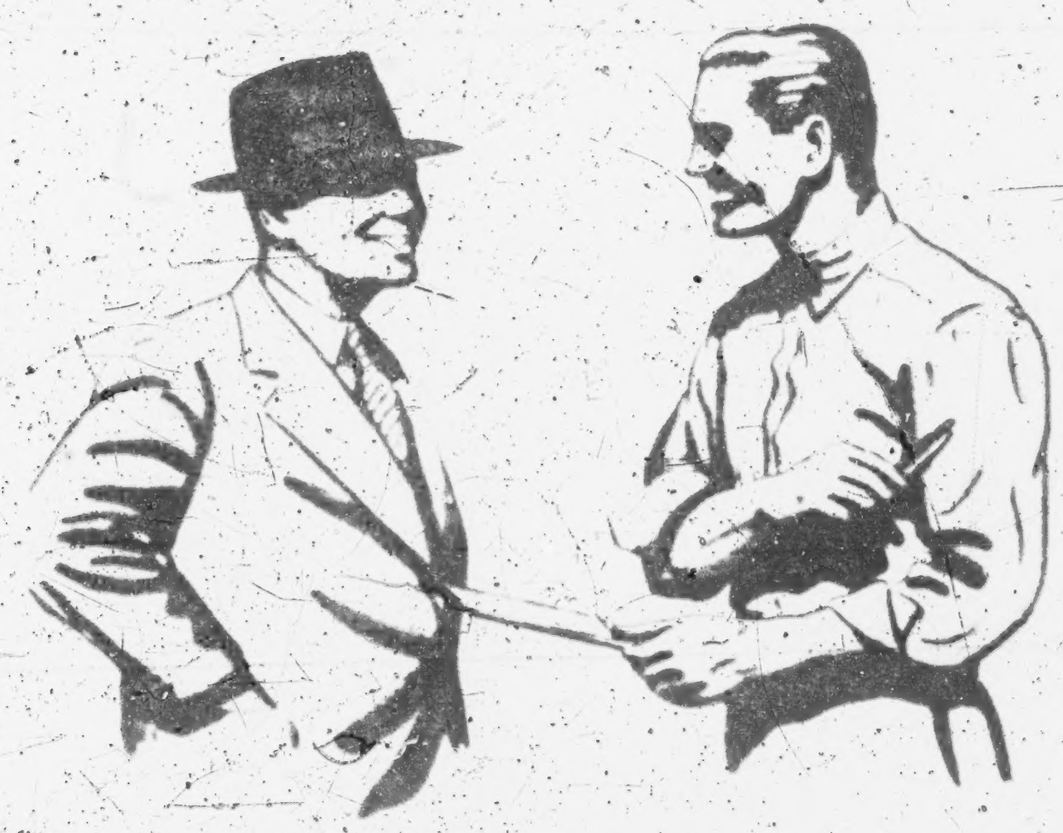
BE FRIENDLY

Friendliness shows appreciation, invites confidence.



BE ALERT

The customer values his time. Meet him promptly when he drives in.



BE BUSINESS-LIKE

The way you handle contacts with the customer tells him how you will handle his business.

The MAN makes the station

You're doing business under your own name.
That sets your station apart from others.

It's what you give this station—the thought, care and energy you put into it mainly—that attracts customers.







YOU

Attract customers . . . pave the way for sales

Attract customers . . . pave the way for sales

Attract customers . . . pave the way for sales

Attract customers . . . pave the way for sales

DEFENDANTS EXHIBIT 22

CHEVRON GAS STATION

ROUND TABLE

Prepared exclusively for Chevron Dealers



INTRODUCING *Mr. A. W. Jarrett*

CHEVRON DEALER, TOMBSTONE, ARIZ.

Mr. Jarrett **knows** *that clean restrooms pay off—***in profits**

Here's what one customer wrote about his well-kept facilities:

"One of the few and cleanest restrooms I have ever been in. It amazes me that traveling with my husband at times, one finds so few they can really rave about. This station really had a clean place, as if everything had just been scrubbed."

For a man 80 years young, Mr. Jarrett is doing a remarkable job. Local labor is hired to completely clean each restroom twice weekly. In addition, the restrooms are serviced many times daily. His Gasoline sales are excellent—operating hours are maintained for the convenience of his customers.

This all adds up to A. W. Jarrett being one of many progressive Chevron Dealers in Arizona.

2808

Somebody's been reading my mind!



RESTROOM CLEANUP GUIDE

1. Dispensers: Keep supplied at all times with soap, toilet paper, paper towels and seat covers . . . wipe off regularly.

2. Toilets: Clean bowls with brush, inside and out. Remove stains . . . clean top and bottom of seats . . . wipe off tank and pipes.

3. Urinal: Clean with brush . . . remove stains . . . keep drain holes clear.

4. Wash Bowl: Clean with scouring powder . . . polish faucets and pipes.

5. Plumbing: Keep drainage of toilets, urinal and wash bowls free.

6. Mirror: Clean in same way as windshield.

7. Waste Basket: Wash off any dirt stains—empty often.

8. Sanitary Waste Can: Keep clean and empty.

9. Walls, Woodwork and Doors: Wash off finger marks and stains.

10. Furniture: Wipe with a damp cloth.

11. Floor: Sweep and mop . . . use clean water containing disinfectant.

Check often during the day
Happy customers buy more

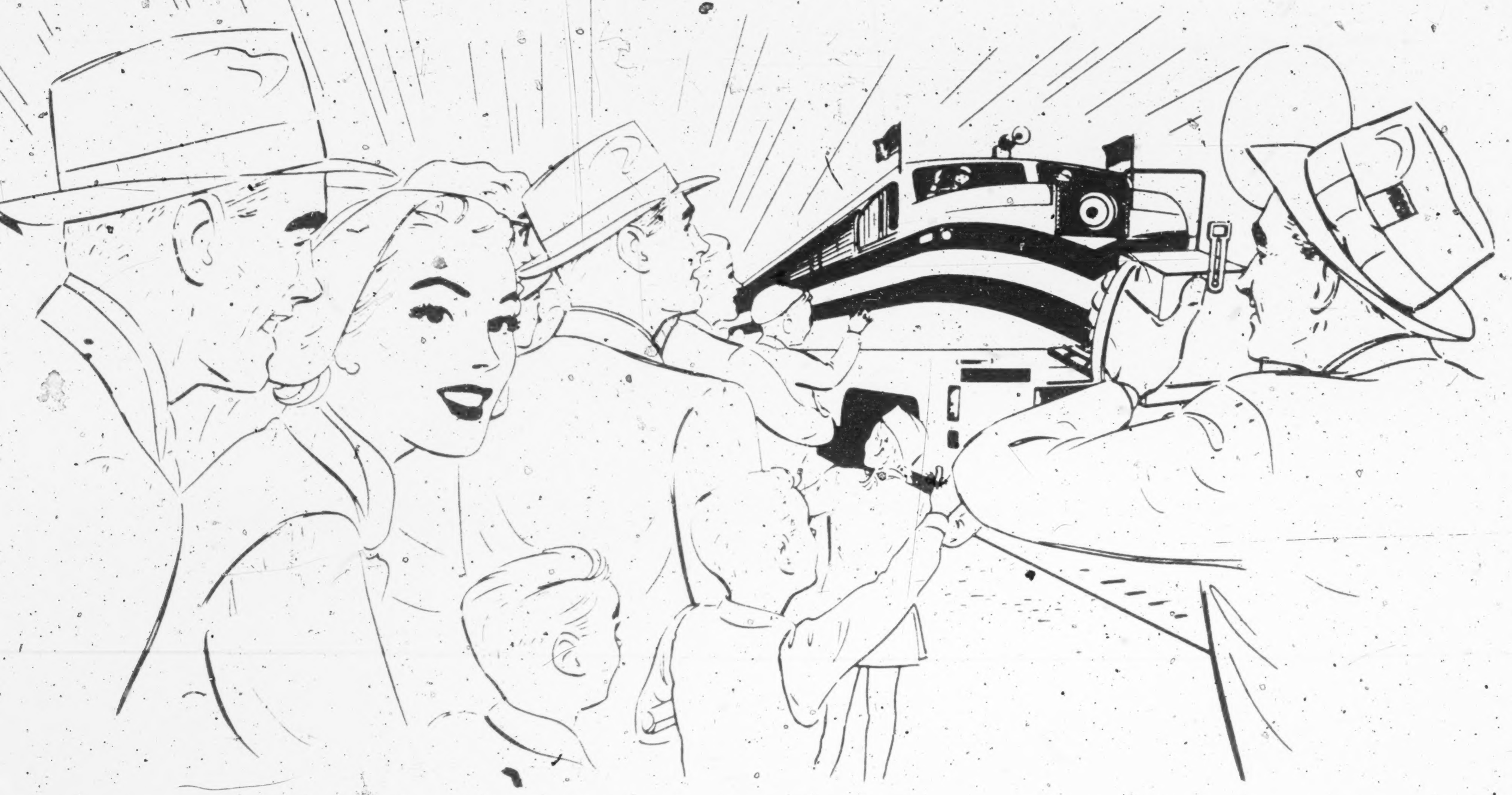
2809

CHEVRON GAS STATION

ROUND TABLE

Prepared exclusively for Chevron Dealers

THE FREEDOM TRAIN IS COMING



Enclosed are copies of the

BILL OF RIGHTS

for your use as a pass-out to

YOUR CUSTOMERS

389

2810

1850

THE FREEDOM TRAIN SCHEDULE



Standard of California will run large newspaper advertisements inviting motorists to stop at Chevron Gas Stations for "a beautiful engraving of the Bill of Rights...a facsimile of the document that gave you freedom."

These attractive pass-outs will build business and create good will for your station.

Douglas, Arizona	February 18
Tucson, Arizona	February 19
Phoenix, Arizona	February 20
Yuma, Arizona	February 21
San Diego, California	February 22
Los Angeles, California	February 23, 24 & 25
Long Beach, California	February 26
Pasadena, California	February 27
Pomona, California	February 28
San Bernardino, California	February 29
Riverside, California	March 1 & 2
Bakersfield, California	March 3
Fresno, California	March 4
Modesto, California	March 5
Stockton, California	March 6
San Francisco, California	March 7, 8 & 9
Palo Alto, California	March 10
San Jose, California	March 11
Oakland, California	March 12
Sacramento, California	March 13
Reno, Nevada	March 14 & 15
Elko, Nevada	March 16
Salt Lake City, Utah	March 17
Provo, Utah	March 18
Ogden, Utah	March 19
Pocatello, Idaho	March 20
Boise, Idaho	March 21 & 22
Walla Walla, Washington	March 23
Yakima, Washington	March 24
Portland, Oregon	March 25 & 26
Eugene, Oregon	March 27
Corvallis, Oregon	March 28
Salem, Oregon	March 29 & 30
Olympia, Washington	March 31
Tacoma, Washington	April 1
Seattle, Washington	April 2
Wenatchee, Washington	April 3
Spokane, Washington	April 4 & 5
Coeur d'Alene, Idaho	April 6

CHEVRON GAS STATION

ROUND TABLE

Prepared exclusively for Chevron Dealers

GOOD LIGHTING
ATTRACTS CUSTOMERS . . .

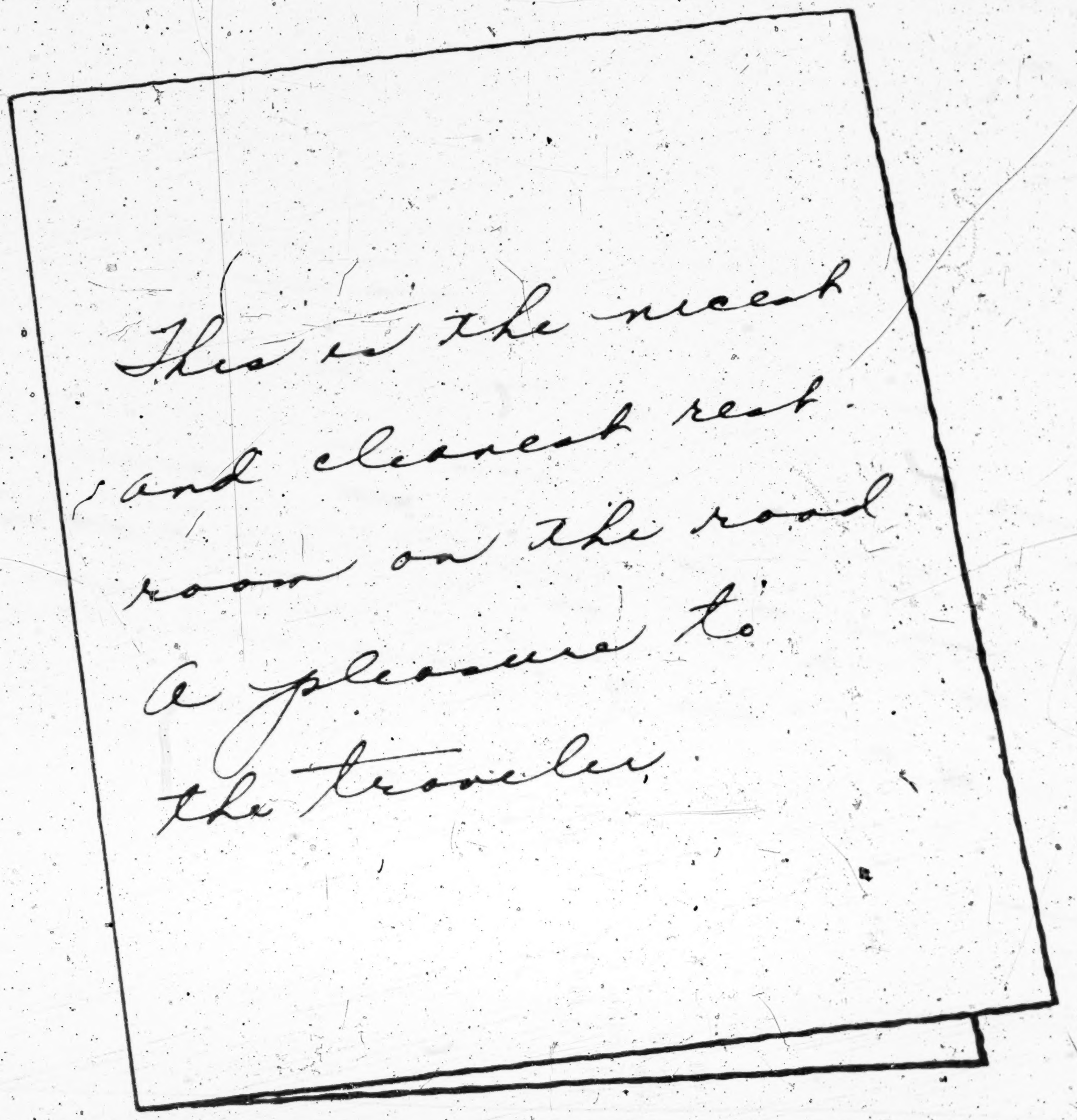
CHEVRON GAS STATION

The Pay-off is in PROFITS!



Memo:
Lights are getting longer-let motorists know-paint open-turn lights on early

This note was found in the Ladies' Restroom of a CHEVRON GAS STATION in Olympia, Washington

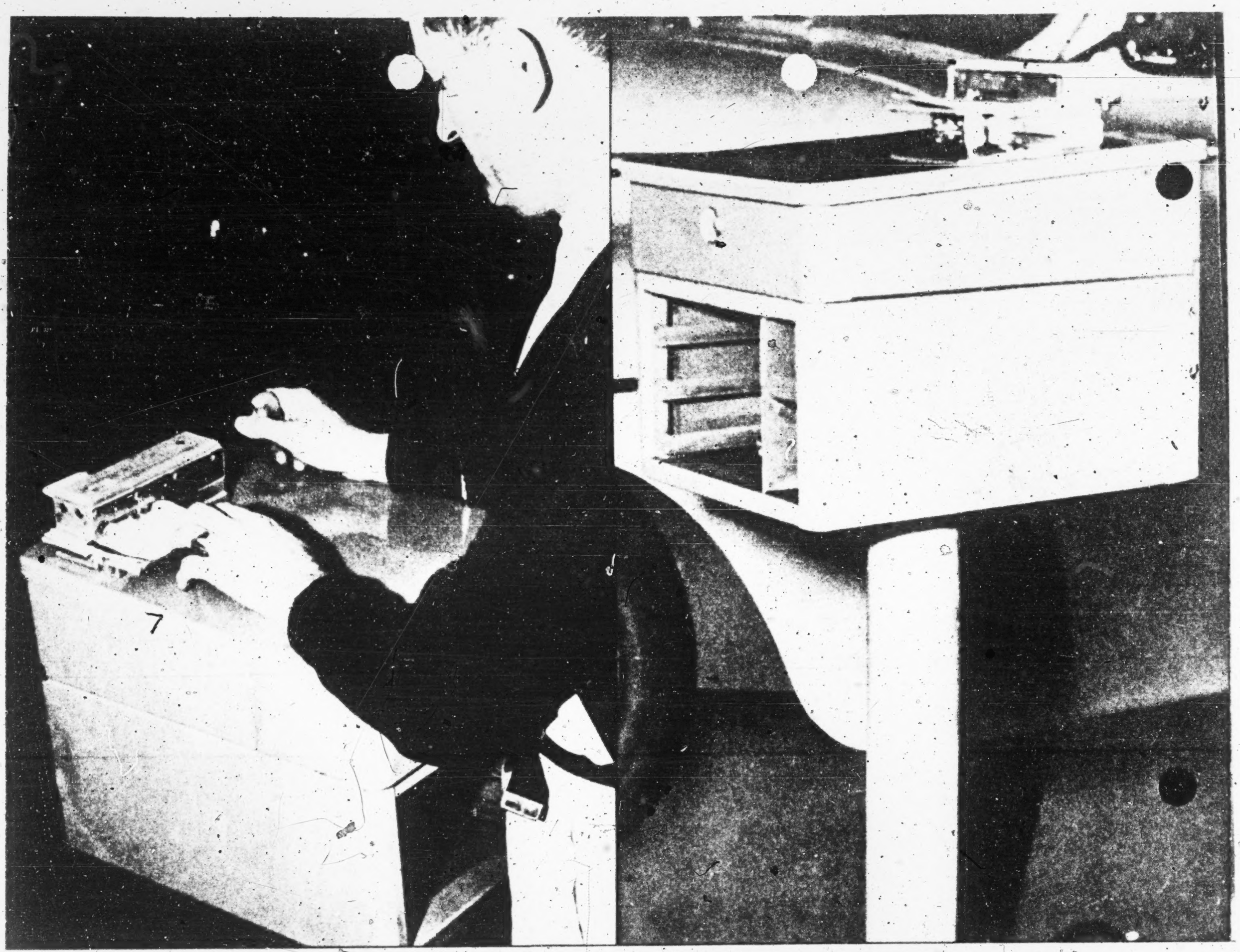


Your customers appreciate CLEAN RESTROOMS



SAVES YOU TIME

PROVIDES FASTER SERVICE



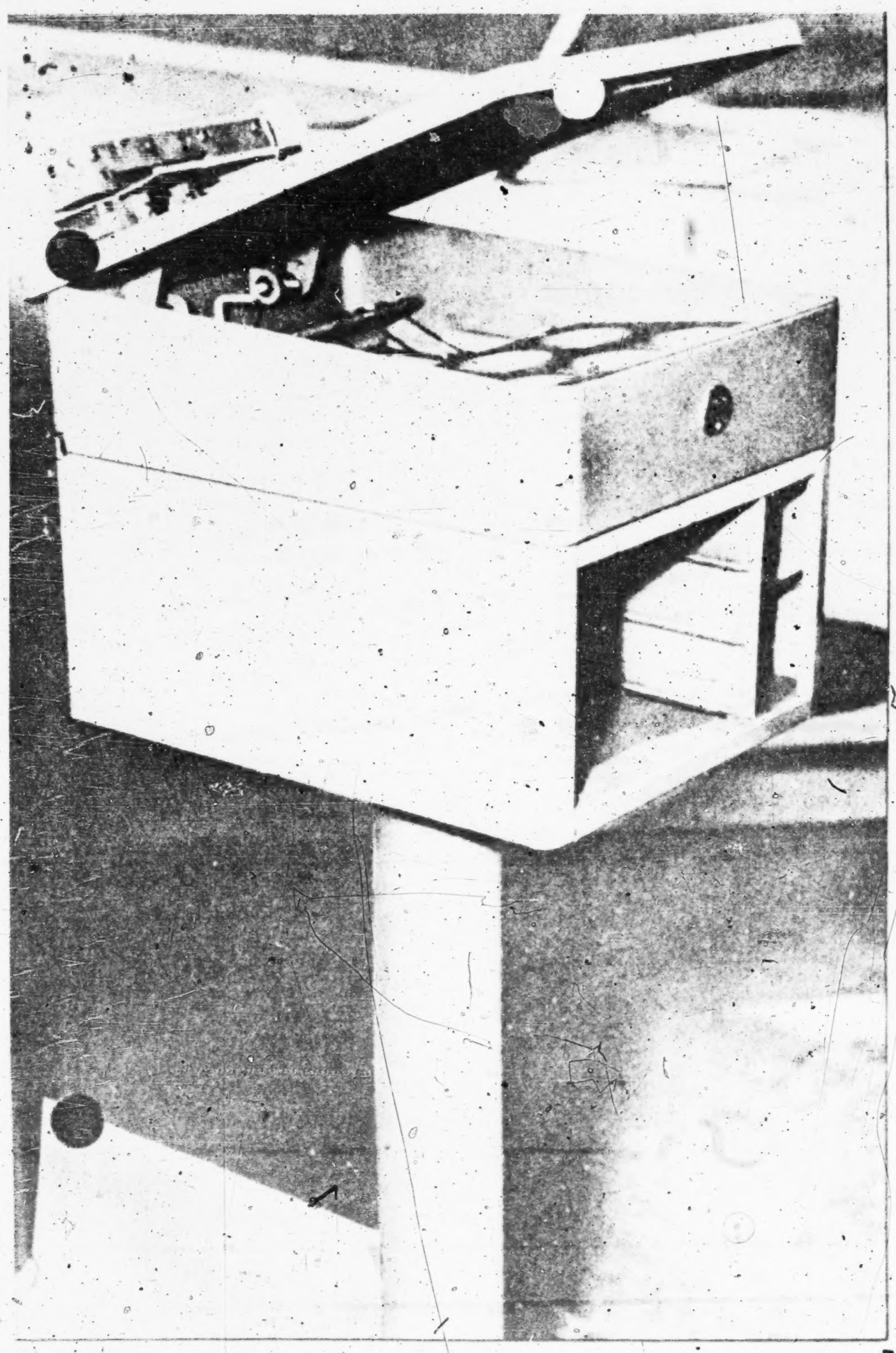
OUTSTANDING FEATURES OF CHEVR

- Yale lock keeps money safe
- Contains handy compartments for Work Order Forms, Whisk Broom, etc.
- Curved coin trays facilitate change-making
- Sturdily constructed of 18-gauge metal

CHEVRO-MATIC IS A BIG TIME-SAVER WHEN INST

RECORD

P. 1849-1857



The local Standard Representative will discuss with you soon the availability of the new Chevro-matic Imprinter and cash box. Chevro-matic will be available for a very small charge. It imprints with one operation Credit Card Number, Customer's Name, Date, and Your Name and Address on S-28's.

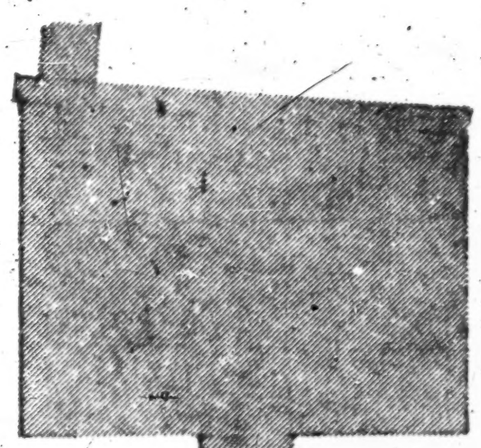
ON DEALER CASH BOX

- Beautifully finished in green baked enamel
- Spring clips hold bills securely
- Spring opens lid when lock is released
- Pipe mounting for pump block installation. (Can easily be taken indoors at night)

TALLED ON A CASH BOX AT YOUR PUMP BLOCK

2816

BE EFFICIENT WITH A CHEVRON DEALER CASH BOX. SAVE YOURSELF TIME AND ENERGY. CUSTOMERS LIKE IT TOO.



Your cost $37.50 plus freight, installation and sales tax where applicable—available on conditional sales contract. Height above ground, 42½". Desk and cash box dimensions, 16" x 12" x 13". Shipping weight, 57 pounds.

Ask the Standard Representative

2817

1569

MICROCARD

TRADE MARK ®



48

DEFENDANTS' EXHIBIT EEE

Deputy Clerk

2823

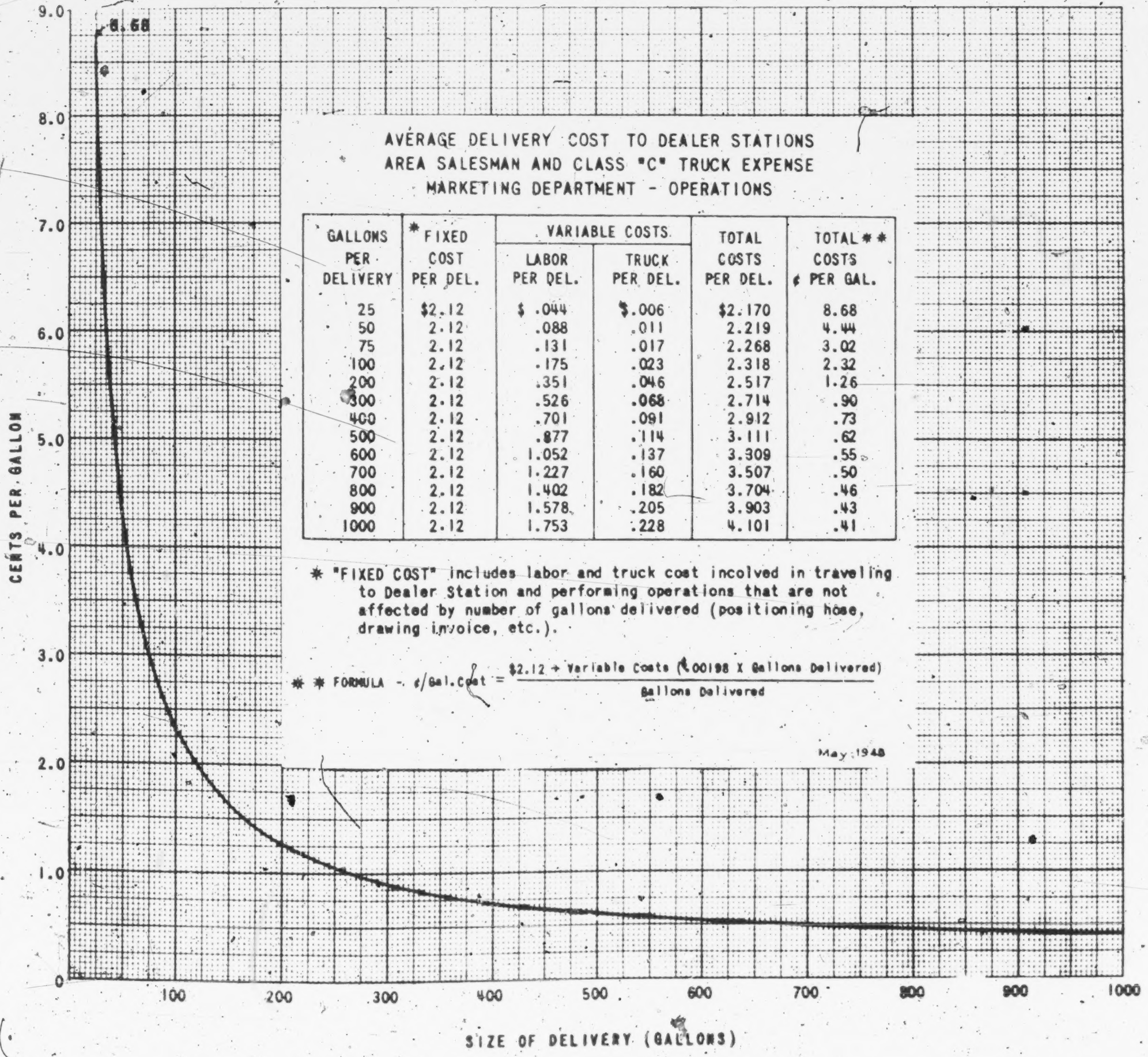
AVERAGE DELIVERY COST TO DEALER STATIONS
AREA SALESMAN AND CLASS "C" TRUCK EXPENSE
MARKETING DEPARTMENT - OPERATIONS

GALLONS PER DELIVERY	* FIXED COST PER DEL.	VARIABLE COSTS LABOR PER DEL.	VARIABLE COSTS TRUCK PER DEL.	TOTAL COSTS PER DEL.	TOTAL ** COSTS ¢ PER GAL.
25	$2.12	$ .044	$.006	$2.170	8.68
50	2.12	.088	.011	2.219	4.44
75	2.12	.131	.017	2.268	3.02
100	2.12	.175	.023	2.318	2.32
200	2.12	.351	.046	2.517	1.26
300	2.12	.526	.068	2.714	.90
400	2.12	.701	.091	2.912	.73
500	2.12	.877	.114	3.111	.62
600	2.12	1.052	.137	3.309	.55
700	2.12	1.227	.160	3.507	.50
800	2.12	1.402	.182	3.704	.46
900	2.12	1.578	.205	3.903	.43
1000	2.12	1.753	.228	4.101	.41

* "FIXED COST" includes labor and truck cost incolved in traveling to Dealer Station and performing operations that are not affected by number of gallons delivered (positioning hose, drawing invoice, etc.).

** FORMULA - ¢/Gal. Cost = $\frac{\$2.12 + \text{Variable Costs } (.00198 \times \text{Gallons Delivered})}{\text{Gallons Delivered}}$

May 1948



[fol. 2821] DEFENDANT EXHIBIT CCC

Automotive Oils Year 1947

Motor Oil	Dealer Sales Bbls.	% of Total
RPM	95,510	69.2
Zerolene	20,724	15.0
St'd Penn	21,833	15.8
Total	138,117	100.0

114-279

DEFENDANTS' EXHIBIT AAA

DAILY REPORT

DATE _____ 19__

INVENTORY	GASOLINE					RPM						STANDARD PENN					
	CHEVRON SUPREME	CHEVRON				10	20	30	40	50	CANS	10	20	30	40	50	CANS
OPENING																	
RECEIPTS																	
TOTAL																	
CLOSING																	
SALES																	
	(1)	(2)	(3)	(4)	(5)	(6)						(7)					

INVENTORY	ZEROLENE					PEARL OIL	CHEVRON CLEANING SOLVENT	RPM FLUSHING OIL
	10	20	30	40	50			
OPENING								
RECEIPTS								
TOTAL								
CLOSING								
SALES								
	(8)					(9)	(10)	(11)

NET PURCHASES THIS MONTH

	ACCESSORY PACKAGE GOODS	OTHER MISCL.	TIRES-TUBES BATTERIES		
BROUGHT FORWARD					
PURCHASES TODAY					
ACCUMULATED TOTAL FOR MONTH					

TIRE SALES

TYPE	NO.	SIZE	PLY	LIST	ALLOWANCE	NET AMOUNT
X X		X X X	X	X X	X X	(12)

TUBE SALES

TYPE	NO.	SIZE	VALUE
X X		X X X	(13)

BATTERY SALES

TYPE	NO.	SIZE	LIST	ALLOWANCE	NET AMOUNT
X		X X X	X X	X X	(14)

OTHER SALES

NO.	ITEM	VALUE
X X	X X X	(15)

ACCESSORY-PACKAGE GOODS SALES

NO.	ITEM	AMOUNT

EXPENDITURES

LINE NO.	DETAIL	S-800A INVOICE AMT.	S-28 AMT.	CHECK NO.	CHECK AMT.	CASH AMT.
X	S. O. CO. PACKAGE GOODS GASOLINE—OIL					
32	S. O. CO. LUB UNIT PRODUCTS					
26	LABOR					
27	RENT—LIGHT and POWER—TAXES LICENSES—INSURANCE—ADVERTISING—DETAIL					
28	TOOLS AND SUPPLIES					
R	SALES TAX PAYMENTS					
29	FEDERAL-STATE PAYROLL TAXES					
30	MAINTENANCE					
31	OTHER STATION EXPENSE					
N	OTHER VENDORS					
P	OTHER COMM. CHECK DEDUCTIONS					
X X	TOTAL			X X X		(H)

METER READINGS

	CHEVRON SUPREME	CHEVRON	
CLOSING			
OPENING			
METER SALES			
STICK SALES			
OVER OR SHORT			

PRODUCTS USED FROM STOCK

	DETAIL	VALUE
LUB. UNIT USE	(32)	
STATION USE	(31)	

SALES AND CASH SUMMARY

LINE NO.	PRODUCT		SALES	PRICE	AMOUNT
1	CHEVRON SUPREME				
2	CHEVRON				
3					
4					
5					
6	RPM	BULK			
		CANS			
7	STANDARD PENN	BULK			
		CANS			
8	ZEROLENE	BULK			
9	PEARL OIL				
10	CHEVRON CLEANING SOLVENT				
11	RPM FLUSHING OIL				
12	TIRE SALES	No.			
13	TUBE SALES	No.			
14	BATTERY SALES	No.			
15	OTHER SALES				
16	ACCESSORY - PACKAGE GOODS SALES				
17	TIRE - TUBE REPAIRS				
18	BATTERY SERVICE				
19	PARKING AND STORAGE				
20	WASHING AND POLISHING				
21	LUBRICATION REVENUE (TAXABLE AMOUNT $ _____)				
22	TIRE—TUBE—BATTERY COMMISSION				
23	SALES TAX ACCOUNT				
24	OTHER SERVICE INCOME				
25	TOTAL SALES AND SERVICES				

CASH AND CREDIT RECEIPTS

A	CASH AND CHECKS	$ _____	X X	X
B	LESS: PREVIOUS DAY'S CASH NOT BANKED	$ _____		
C	SCRIP			
D	S-28 DEL. RECEIPTS (PRODUCTS SERVICES ACCESSORIES)			
E	S-28 DEL. RECEIPTS (TIRES—TUBES BATTERIES)			
F	S-40 BUDGET SALES, $623			
G	PERSONAL WITHDRAWALS			
H	EXPENDITURES—CASH PAYMENTS			
I	LOCAL CUSTOMER CHARGE SLIPS			
J	SUB-TOTAL			
K	LESS— COLLECTIONS LOCAL CREDIT $ _____		X X	X
L	OTHER REFUNDS $ _____			
M	TOTAL NET RECEIPTS			
33	OVER OR SHORT			

LOCAL CHARGE AND CREDIT ACCOUNTS

CHARGES		COLLECTIONS	
NAME	AMOUNT	NAME	AMOUNT
TOTAL (I)		TOTAL (K)	

FORM RA-1-1-49

2819

fol. 2822]

DEFENDANTS' EXHIBIT NO. DDD

Average Installation Costs

	1 Pump 1–550 gal tank	2 Pumps 2–550 gal tanks	Added Cost 2nd Pump and tank	1 Pump 1–1000 gal tank	2 Pumps 2–1000 gal tanks	Added Cost 2nd Pump and Tank
Computing pump	$313	$626	$313	$313	$626	$313
Tank	55	110	55	79	158	79
Fill box and cap	11	22	11	11	22	11
Install pump	30	60	30	30	60	30
Excavate and backfill tank	100	175	75	125	225	100
Piping—suction and vent	175	350	175	175	350	175
Electrical work	75	100	25	75	100	25
Patch paving and concrete	75	125	50	100	150	50
Sales tax	10	19	9	10	20	10
Freight and drayage	15	25	10	25	40	15
Overhead	36	66	30	39	73	34
Total	$895	$1,678	$783	$982	$1,824	$842
Approx. Total	$900	$1,700	$800	$1,000	$1,800	$800

(Here follows 1 photolithograph, side folio 2823)

DEFENDANT'S EXHIBIT B-[illegible]

2819

[fol. 2825]

Defendants' Exhibit No. GGG

Companies Marketing Their Own Brand of Lubricating Oil Either Manufactured or Purchased

(1946)

	States in Which Company Markets Lube Oil						
	Cal.	Wash.	Ore.	Ariz.	Nev.	Ida.	Utah
Alemite Corporation	x	x	x	x	x	x	x
All-Lube Corporation	x	x	x	x	x	x	x
Barkow Petroleum Company	x	x	x	..	..	..	..
Battenfeld	x	x	x	x	x	x	x
Ben Hur Refining Corporation	x	..	..	..	..	..	..
Caminol Company	x	..	..	..	..	..	..
Carter Oil Company	..	x	..	..	..	x	..
Cato Oil Company	x	x	x	x	x	x	x
Century Oil Company	x	..	..	..	..	..	..
Clack Company, H. Earl	..	x	x	..	..	x	..
Continental Oil Company	x	..	..	..	..	x	x
Cooperative Oil Association	..	..	x	..	..	x	..
Dacus Oil Company	x	..	..	..	..	..	..
Eagle Oil & Refining Company, Inc.	x	..	..	..	..	..	..
Exeter Refining Company	x	..	..	..	..	..	..
Farmers Oil Company	..	..	..	..	..	x	..
Ferrar Company	x	..	..	..	..	..	x
Fisk Brothers	x	x	x	x	x	x	x
Fletcher Oil Company	x	x	x	..	..	x	..
Freedom Valvoline Company	x	x	x	x	x	x	x
Central Petroleum Corporation	x	x	x	x	x	x	x
Golden Bear Oil Company	x	..	..	..	..	..	..
Hancock Oil Company of California	x	..	..	..	..	..	..
Hercules Oil Company	x	..	..	..	..	..	..
Hollunshead, R. N., Corporation	x	x	x	x	x	x	x
Houghton, E. F. & Company	x	x	x	x	x	x	x
Hyvis Oil Company	x	x	x	x	x	x	x
Idaho Refining Company	..	..	..	..	..	..	x

[fol. 2826]

Kendall Oil Company	x	x	x	x	x	x	x
Keystone Lub. Company	x	x	x	x	x	x	x
Kreiger Oil Company	x	..	..	..	..	..	..
MacMillan Petroleum Corporation	x	..	..	..	..	..	..
Master Lub. Company	x	x	x	x	x	x	x
Mohawk Petroleum Corporation	x	..	..	..	..	..	..
Montgomery, Ward & Company	x	x	x	x	x	x	x
Northwest Oil Company	..	x	x	..	..	x	..
Norwalk Company	x	..	..	..	..	..	..
Pennant Oil & Grease Company	x	..	..	..	..	..	..
Pennzoil Company	x	x	x	x	x	x	x
Petrol Corporation	x	..	..	..	..	..	..
Quaker State Oil Company	x	x	x	x	x	x	x
Rasmussen Oil Company	..	x	x	..	..	..	..
Refiners' Marketing	x	..	..	..	..	..	..
Richfield Oil Corporation	x	x	x	x	x	x	..
Rothschild Oil Company	x	..	..	..	..	..	..
Ryt Oil Company	x	x	x	..	..	..	..
Sears-Roebuck & Company	x	x	x	x	x	x	..
Seaside Oil Company	x	..	..	x	..	..	..
Shell Oil Company, Inc.	x	x	x	x	x	x	x

fol. 2824]

DEFENDANT EXHIBIT No. FFF

Competitive TBA at Chevron Dealers Signed on TBA Agreements

District	No. of CDA'S	No. CDA'S Handling Competitive MDSE. (TBA)									
		Tires		Tubes		Batteries		Accessories		Any	
		No.	%	No.	%	No.	%	No.	%	No.	%
San Francisco	176	64	36	65	37	89	51	104	59	131	74
Oakland	138	48	35	44	32	61	44	88	64	117	87
Los Angeles	159	73	46	73	47	99	62	103	65	132	85
Long Beach	216	91	42	112	52	106	49	142	66	207	97
San Diego	105	34	32	35	33	34	32	55	52	71	77
Phoenix	195	72	37	83	43	58	30	136	70	153	79
Bakersfield	101	30	30	25	25	30	30	48	48	61	61
Fresno	133	57	43	59	44	54	41	92	69	108	79
Sacramento	213	93	44	89	42	72	34	131	62	152	72
Portland	390	134	34	137	35	138	35	243	62	285	74
Salt Lake	298	106	36	121	41	102	34	218	73	226	77
Seattle	340	113	33	114	34	91	27	221	65	240	71
Spokane	313	113	36	130	42	75	24	246	79	261	85
Total	2,777	1,028	37	1,087	39	1,009	36	1,827	66	2,146	77

Survey January, 1947.
Date of Summary, April, 1948.


DODGE & PLYMOUTH
DODGE TRUCKS
SERVICE ENTRANCE

DEFENDANTS' EXHIBIT No. GGG

Companies Marketing Their Own Brand of Lubricating Oil Either Manufactured or Purchased

(1946)

	States in Which Company Markets Lube Oil.						
	Cal.	Wash.	Ore.	Ariz.	Nev.	Ida.	Utah
Signal Oil Company	x	x	..	x	x	..	..
Sinclair Refining Company	..	..	..	x	..	..	..
Standard Oil Company of California	x	x	x	x	x	x	x
Stewart, D. A. Company	x	x	x	x	x	x	x
Sunland Refining Corporation	x	..	..	..	..	x	x
Sunset Oil Company	x	x	x	..	..	..	..
Sunset-Fisch Corp.	x	x	x	x	x	x	x
The Lubrico Company of Phila.	x	x	x	x	x	x	x
The Texas Company	x	x	x	x	x	x	x
Tide-Water Associated Oil Company	x	x	x	x	x	x	..
Time Oil Company	x	x	x	x	..	..	..

[fol. 2827]

True's Oil Company	..	x	x	..	..	x	..
Union Oil Company of California	x	x	x	x	x	x	x
United Oil of Idaho	..	..	..	..	..	x	..
Utah Oil Refining Company	..	..	..	x	..	x	x
Wasatch Dixie Oil Company	..	..	..	..	x	..	x
Wasatch Oil Refining Company	x	..	..	..	x	..	x
Western Auto Supply Company	x	x	x	x	x	x	x
West Point Oil Company (LA)	x	..	..	..	..	..	..
Wilshire Oil Company	x	x	x	..	x	..	..

[fol. 2828] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed July 20, 1948

Standard Oil Company of California, a corporation, and Standard Stations, Inc., a corporation, defendants in the above entitled cause, considering themselves aggrieved by the final judgment of this Court entered on June 30, 1948, do hereby pray an appeal from said final judgment to the Supreme Court of the United States.

Pursuant to Rule 12 of the Revised Rules of the Supreme Court of the United States, as amended, said defendants present to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

[fol. 2829] The particulars wherein said defendants consider the judgment erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

The defendants pray that their appeal may be allowed and that citation be issued as provided by law, and that the amount of an appeal bond be fixed and said bond be approved, and that a transcript of the records, proceedings and documents upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Dated: July 20, 1948.

Marshall P. Madison, John M. Hall, Attorneys for Said Defendants.

[fol. 2830] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed July 20, 1948

Defendants in the above entitled cause (defendant, Standard Oil Company of California, being herein called "Standard"), in connection with their petition for appeal to the Supreme Court of the United States, hereby assign error to the record and proceedings and the entry of the final judgment of the District Court on June 30, 1948, in the above entitled cause, and say that in the entry of said final judgment the District Court committed error to the prejudice of defendants in the following particulars:

[fol. 2831] 1. The court erred in holding and concluding that the agreements and subleases herein involved were an unreasonable restraint of or might have the effect of substantially lessening competition or tending to create a monopoly in a line of interstate commerce in view of the number of such agreements and subleases and the quantity and value of products and accessories purchased from Standard by the dealers having such agreements and subleases, irrespective of the evidence in the record relating to competitive market conditions or Standard's competitive position in the area in question or defendants' intent or purpose, with respect to such agreements or subleases.

2. The court erred in holding and concluding, in view of the entire evidence in the record repelling each such holding and conclusion:

(a) That the agreements or subleases directly affect or unreasonably restrain the course of interstate commerce in petroleum products or automotive accessories.

(b) That the agreements or subleases substantially lessen competition or tend to create a monopoly in the sale or distribution of petroleum products or automotive accessories, or that this may be their effect.

(c) That there was any violation of sec. 1 of the Sherman Act (26 Stat. 209; 15 U. S. C. A. 1) or of sec. 3 of the Clayton Act (38 Stat. 731; 15 U. S. C. A. 14).

(d) That the subleases or any of the provisions thereof, or the agreements or any of the provisions thereof, were within the purview of either sec. 1 of the Sherman Act (26 Stat. 209; 15 U. S. C. A. 1) or sec. 3 of the Clayton Act (38 Stat. 731; 15 U. S. C. A. 14).

(e) That the agreements or subleases have had the effect [fol. 2832] of foreclosing competition in the sale of petroleum products or automotive accessories from a substantial market, or were so intended by either of the defendants.

(f) That the agreements or subleases unreasonably restrained or substantially lessened competition in an appreciable segment of interstate commerce in the sale or distribution of petroleum products or automotive accessories, or were so intended by either of the defendants.

(g) That the agreements or subleases have had the effect of denying dealers access to competitors' products or of locking out dealers from the sources of products originating in interstate commerce, or were so intended by either of the defendants.

(h) That the agreements or subleases have had the effect of denying manufacturers or suppliers access to a substantial or any number of potential outlets for their products, or were so intended by either of the defendants.

(i) That the number of outlets or the volume of business in petroleum products or automotive accessories foreclosed to competition by the agreements or subleases was or is substantial.

(j) That any of the provisions of the agreements or subleases were or are illegal in their effect, or that plaintiff is entitled to injunctive or other relief.

(k) That either of the defendants made agreements or subleases in the course of interstate commerce, or that interstate commerce was unreasonably restrained by any of the agreements or subleases, or that the agreements or subleases might have the effect of substantially lessening competition or tending to create a monopoly in any line of interstate commerce.

(l) That defendants' purpose or intent was or is to unreasonably restrain or substantially lessen competition in or [fol. 2833] create a monopoly in interstate commerce or

any line, segment or part thereof or any market or substantial market.

(m) That the agreements or subleases with dealers restrained interstate commerce or might have the effect of substantially lessening competition in or tending to create a monopoly in any line of interstate commerce where the agreements or subleases contemplated and in fact resulted in the supplying of the dealer from a refinery or warehouse located in the same state as such dealer.

3. The court erred in making the following findings of fact, each of such findings being unsupported by the evidence in the record:

(a) That the agreements or subleases unreasonably restrained interstate commerce.

(b) That the agreements or subleases might have the effect of substantially lessening competition or tending to create a monopoly in any line of commerce.

(c) That the defendants, or either of them, entered into oral agreements or oral contracts with dealers.

(d) That the agreements or subleases contemplated the movement or distribution of goods in or originating in interstate commerce.

(e) That there is a flow or constant flow in interstate commerce of the products produced or distributed by defendants.

(f) That transactions under the agreements or subleases are in the course of interstate commerce or directly or at all affect the shipment of competitive goods in or originating in interstate commerce.

(g) That the flow or direct flow of interstate commerce has been affected by the agreements or subleases.

[fol. 2834] (h) That either of the defendants induced or influenced dealers to enter into the agreements or subleases by the means or methods stated in paragraph 22 of the findings of fact or made gifts of money to dealers or took action to displace competitive products.

their petroleum products or automotive accessories or increase their sales or compete for the part of the market represented by the retail outlets under contract or sublease to defendants or either of them.

(j) That the purpose or intent or effect of the exclusive supply provisions of the agreements or subleases has been to prevent the dealer from handling products or accessories other than those supplied or sponsored by defendants.

(k) That any part of the agreements or subleases had the intent or purpose or effect of preventing or did in fact prevent dealers from handling miscellaneous accessories other than those supplied or sponsored by defendant.

(l) That dealers were denied access to competitive products by any of the provisions of the agreements or subleases, or that dealers have been prevented from purchasing the merchandise they desire in an open or competitive market or at prices determined by free or open competition.

(m) That Standard sold approximately 23% of all the gasoline sold in the Western area during 1946. This finding under the evidence should have been that in 1946 Standard sold in the Western area to all classes of trade, that is, sold through service stations, both independent and company-employee operated, and other retail outlets, as well as to industrial, commercial and agricultural accounts, [fol. 2835] 23% of the petroleum products sold to all such classes of trade.

4. The court erred in failing to find in accordance with the uncontradicted evidence the facts with respect to competitive market conditions or Standard's competitive position in the area in question or defendants' intent or purpose with respect to such agreements or subleases, and, in the absence of such findings, holding and concluding that the agreements and subleases were an unreasonable restraint of or might have the effect of substantially lessening competition or tending to create a monopoly in interstate commerce.

5. The court erred in failing to find in accordance with the uncontradicted evidence the facts with respect to each of the following:

(a) Standard's proportion of retail dealer sales to total

involved in the Western area, and the most populous parts thereof, and the changes in that proportion over a period of years.

(b) The policy pursued by Standard of entering into contract or lease relationship with the fewest possible number of retail dealer outlets consistent with its service of the area.

(c) The lack of territorial concentration of Standard's retail dealer outlets.

(d) The decrease in the number of Standard's retail dealer outlets over a period of years.

(e) The proportion of Standard's retail dealer outlets to the total number of dealer outlets.

(f) Market conditions generally within the Western area affecting the distribution of the products and accessories [fol. 2836] herein involved.

(g) The total number of retail dealer outlets for the products and accessories herein involved within the Western area.

(h) The proportion of retail gasoline outlets in the Western area handling the products or accessories of more than one supplier to the total number of retail gasoline outlets in such area.

(i) The number, growth, strength, operation and practices of defendants' competitors in the Western area and parts thereof.

(j) The relatively greater expansion enjoyed by certain of defendants' competitors in retail dealer sales in proportion to the expansion of defendants' retail dealer sales of products and accessories herein involved.

(k) The benefits accruing to both dealers and the motoring public as a result of the service maintained by Standard through its retail dealers, such service being made possible by the agreements and subleases, and the nature, character and scope of such service.

(l) The absence of any specific intent or purpose on the part of either defendant to accomplish any forbidden restraint or a substantial lessening of competition or to

monopolize or attempt to monopolize by the agreements or subleases or by other means.

(m) The nature and extent of Standard's dealings with dealers in the absence of any written agreement or sublease.

(n) The extent to which dealers with and dealers without contractual or lease arrangements with Standard handled products or accessories competitive with those supplied by Standard.

(o) The issues tendered by the allegations of the Second [fol. 2837] Defense pleaded in defendants' answer.

(p) The issues tendered by the allegations of the Third Defense pleaded in defendants' answer.

(q) The issues tendered by the allegations of the Fourth Defense pleaded in defendants' answer.

(r) The issues tendered by the allegations of the Fifth Defense pleaded in defendants' answer.

6. The court erred in sustaining objection by plaintiff's counsel to the following questions put by defendants' counsel to the witness, Robert W. Garrett:

(a) "What, in your opinion, Mr. Garrett, would be the effect on competition of the elimination of requirement clauses by suppliers generally? I am asking you for your opinion as an expert in the field of marketing of petroleum products and in the light of your training and experience in that field."

(b) ". . . Would the elimination of requirements clauses, Mr. Garrett, by suppliers generally, in your opinion, tend to a substantial increase in company-operated units?"

(c) "Mr. Garrett, in your opinion, would the elimination of requirements contracts by suppliers generally tend to promote the growth of dealer-operated chain of service stations?"

(d) "Mr. Garrett, assume that a split-pump system became general; in your opinion, based upon your training and experience, what, if any, would be the change in the overall competitive picture under such split-

pump system so far as it relates to suppliers of products to retail outlets?"

[fol. 2838] (e) "Would the elimination of all requirements clauses by suppliers generally increase or decrease the number of existing service stations?"

(f) "Would the elimination of all requirements clauses by suppliers generally tend to give the more prominent suppliers a competitive advantage?"

(g) "From the economic standpoint, Mr. Garrett, what can you tell us about the split-pump distribution system as compared with the present single supplier system of distribution in the petroleum marketing field?"

(h) "From the economic standpoint does a split-pump distribution system increase the cost of distribution as compared with a single supplier system so far as the dealer is concerned?"

(i) "From the economic standpoint does a split-pump distribution system increase the cost of the distribution as compared with a single supplier system so far as the supplier is concerned?"

(j) "Is a split-pump system inherently and from the economic standpoint a more expensive system of distribution?"

(k) "Assuming that a split-pump system from the economic standpoint would be a more expensive system, in your opinion, would the added expense under a split-pump system be ultimately borne by the purchasing public?"

7. The court erred in its rulings at and previous to the time that objections to the foregoing questions put to the [fol. 2839] witness, Robert W. Garrett, were sustained, that it would not permit testimony concerning the effect of the agreements or subleases on prices or the economic merits or demerits of the present system as contrasted with a system which would prevail if the contract and sublease provisions attacked by plaintiff were eliminated, and would not permit testimony as to what the latter system would be, and that it was immaterial that economic benefit might

result from the present system and economic detriment result from its abandonment, such rulings being exemplified by the court's action in sustaining said objections and by the following statements of the court:

". . . I am not going to allow any testimony regarding the effect of this arrangement on prices, because I have already said that I consider it immaterial for two reasons; first, that this is not a price-fixing case and, in the second place, it appears that the unreasonableness of the restraint under the Sherman Act and the substantiality of the restriction under the Clayton Act are not affected by the price at which the product is sold to the public.

. . . . . .

"I desire to state for the record that I consider the questions propounded to this witness as going to the economic merits or demerits of the present system as contrasted with a system which prevailed prior to its establishment and which would prevail if the court declared the present arrangement between the supplier, the Standard Oil Company, and the stations governed by dealership contracts or the TBA contracts other than and not including the company-operated [fol. 2840] stations.

"For the reasons indicated, I consider the inquiry beyond the scope of this lawsuit and entirely immaterial because, if the practice is one forbidden by the Statute, the fact that it may result in economic benefit or its abandonment might result in economic loss is not material under the decisions of the Supreme Court and the Circuit Courts of Appeals, as I read them.

"I will state for the record that I would sustain objections to similar inquiry on the part of any other witnesses that the defendant might produce; and I would sustain objections to any chart or documentary evidence seeking to elicit the facts implied in these questions.

"And I will further state for the record that, because of that, the defendants need not call such witnesses or offer such exhibits or make an offer of proof to cover the facts sought to be elicited through this inquiry.

"What is that old expression? 'Hog-tight, bull-strong, and horse-high,' isn't it, like an old-fashioned fence? I have given you a ruling there that will allow you to bring up any facet of that question before any court of appeal that this case may reach."

8. The court erred in enjoining defendants from entering into any contract, agreement or understanding requiring a dealer to secure all of his requirements of petroleum prod-[fol. 2841] ucts or automotive accessories from defendants, and also in decreeing such injunction, irrespective of whether or not such contract or agreement or understanding was an unreasonable restraint of commerce or might have the effect of substantially lessening competition or tending to create a monopoly in any line of commerce.

9. The court erred in enjoining defendants from selling or attempting to sell petroleum products or automotive accessories to any dealer on condition that the dealer would purchase other petroleum products or automotive accessories from defendants or that the dealer would not handle or sell at a retail outlet petroleum products or automotive accessories other than those sold or sponsored by defendants, and also in decreeing such injunction, irrespective of whether or not such condition was an unreasonable restraint of commerce or might have the effect of substantially lessening competition or tending to create a monopoly in any line of commerce.

10. The court erred in denying on July 14, 1947, defendants' motion for a stay of proceedings.

11. The court erred in denying on July 14, 1947, defendants' motion to dismiss.

12. The court erred in denying on June 28, 1948, defendants' motion for reopening, reargument and reconsideration and for a decision in favor of defendants.

Wherefore, defendants pray that said final judgment of the District Court may be reversed, and for such other and further relief as may be just and proper.

Dated: July 20, 1948.

Marshall P. Madison, John M. Hall, Attorneys for defendants.

[fol. 2842] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 20, 1948

In the above entitled cause, defendants Standard Oil Company of California, a corporation, and Standard Stations, Inc., a corporation, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final judgment of this Court in this cause entered on June 30, 1948, and having also made and filed their assignment of errors and prayer for reversal, and statement as to jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided, It is, therefore, ordered and adjudged:

[fol. 2843] That the appeal be and the same is hereby allowed as prayed for; and that defendants shall give a bond for costs only as required by law in the sum $1,000.00; and that a citation shall issue as provided by law; and that a transcript of the records, proceedings and documents upon which said final judgment was based, duly authenticated, be forthwith transmitted to the Supreme Court of the United States.

Dated: July 20th, 1948.

Paul J. McCormick, United States District Judge.

[fol. 2844-2850] Bond on appeal for $1,000.00 approved and filed July 20, 1948, omitted in printing.

[fol. 2851] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

STIPULATION DESIGNATING PORTIONS OF THE RECORD TO BE INCLUDED IN THE TRANSCRIPT ON APPEAL (pursuant to Supreme Court Rule 10)—Filed July 20, 1948

Pursuant to Rule 10 of the Revised Rules of the Supreme Court of the United States, as amended, counsel for plain-

tiff and defendants, by this written stipulation filed with the Clerk of the above entitled Court, stipulate that the following portions of the record shall be included in the transcript, and request said Clerk to prepare and transmit all of the same as the record in the above entitled cause upon defendants' appeal to the Supreme Court of the United States:

[fol. 2852] 1. Complaint.

2. Notice of Hearing of Motions for Stay of Proceedings, (and in the alternative) to Dismiss, (and in the alternative) to Strike from Complaint, for a More Definite Statement or Bill of Particulars, and for Inspection, together with said Motions, and Affidavits and Points and Authorities Supporting the Same.

3. Decision on Motions of Defendants, dated July 14, 1947.

4. Order on Motions, dated July 14, 1947.

5. Answer (of defendants, Standard Oil Company of California and Standard Stations, Inc.) with acknowledgment of service thereof.

6. Stipulation dated April 6, 1948, for Amendment of Answer and Order thereon dated April 19, 1948.

7. Opinion of the Court, dated June 7, 1948.

8. Decision and Order, dated June 7, 1948.

9. Notice of Motion for Reopening, Reargument and Reconsideration and for a Decision in Favor of Defendants.

10. Memorandum (printed) Showing that the Decision of the Supreme Court in United States v. Columbia Steel Co. Requires a Decision in Favor of Defendants, dated June 16, 1948.

11. Receipt (of Notice of Motion for Reopening, Reargument and Reconsideration and for a Decision in Favor of Defendants and accompanying Memorandum).

12. Supplemental Opinion, dated June 28, 1948.

13. Order, dated June 28, 1948.

14. Findings of Fact and Conclusions of Law, dated June 30, 1948.

[fol. 2853] 15. Final Judgment, dated June 30, 1948.

16. Petition for Appeal, dated July 20, 1948.

17. Citation, dated July 20, 1948.

18. Statement as to Jurisdiction, dated July 20, 1948 (omitting therefrom copy of the Opinion of June 7, 1948

and copy of the Supplemental Opinion of June 28, 1948, but showing by an appropriate note appended thereto that said copies were annexed to the original).

19. Statement Calling Attention to the Provisions of Supreme Court Rule 12(3), dated July 20, 1948.

20. Order Allowing Appeal, dated July 20, 1948.

21. Assignment of Errors and Prayer for Reversal, dated July 20, 1948.

22. Proof of Service, dated July 20, 1948.

23. Bond on Appeal, dated July 12, 1948.

24. Stipulation Designating Portions of the Record to be Included in the Transcript on Appeal (Pursuant to Supreme Court Rule 10), dated July 20, 1948.

25. Praecipe Indicating the Portions of the Record to be Incorporated in the Transcript on Appeal, dated July 20, 1948.

26. The Reporter's Transcript of Proceedings at the trial of the above entitled cause, being a record of the proceedings before the above entitled Court on May 4, 5, 6, 12, 13, 17, 18, 19, 20, 21, 25, 26 and 27, 1948.

27. Exhibits received in evidence at the trial, as follows:

Plaintiff's Exhibits 1 to 12, inclusive, 16 to 16F inclusive, 17 to 17-I inclusive, 18, 18C, 19, 19D to 19F inclusive, 20 to 20C inclusive, 21 to 21G inclusive, 22, [fol. 2854] 22D, 22E, 22-I, 23, 23D to 23F inclusive, 23K, 23N, 23-O, 23Q to 23X inclusive, 24 to 24-I inclusive, 53, 53A, 85, 99 to 105 inclusive,

(being all exhibits offered by plaintiff which were received in evidence, except those exhibits which are referred to in the Condensed Statement annexed hereto).

Defendants' Exhibits B to Z inclusive, AA to OO inclusive, QQ to ZZ, inclusive, and AAA to GGG inclusive,

(being all exhibits offered by defendants which were received in evidence).

Said counsel further stipulate that the exhibits referred to in paragraph 27 above were all of the exhibits received in evidence by the above entitled Court upon the trial of this cause, with the exception of certain exhibits, offered by plaintiff and received in evidence upon said trial, which are referred to in the Condensed Statement annexed hereto;

that said Condensed Statement adequately states for all purposes the contents of the Exhibits last referred to; and that said Condensed Statement and this Stipulation with reference thereto are made for the purpose of avoiding unnecessary repetition and omitting irrelevant matter.

Said counsel further stipulate that said Reporter's Transcript of Proceedings at the trial, referred to in paragraph 26 herein, and the Exhibits referred to in paragraph 27 herein, and the Condensed Statement annexed hereto, com-
[fol. 2855] prise a complete record of all proceedings taken and all evidence received upon the trial of the above entitled cause.

July 20, 1948.

William C. Dixon, Special Assistant to the Attorney General; W. Alan Thody, Special Assistant to the Attorney General; Lawrence W. Somerville, Special Attorney; Edwin V. Driscoll, Special Attorney, by William C. Dixon, Attorneys for Plaintiff.
Lawler, Felix & Hall, Pillsbury, Madison & Sutro, Marshall P. Madison, John M. Hall, by John M. Hall, Attorneys for Defendants.

[fol. 2856] CONDENSED STATEMENT WITH RESPECT TO CERTAIN EXHIBITS OFFERED BY PLAINTIFF AND RECEIVED IN EVIDENCE

[fol. 2857] All references herein are to plaintiff's exhibits.

Ex. 18-A. This exhibit comprises the following:

A Lease like Ex. 17-F, dated June 14, 1946, from A. M. Gross, as Lessor, to Standard Oil Company of California, as Lessee, for a term commencing July 20, 1946 and ending July 19, 1949, covering premises in the City of Maywood, California, at a rental of $125.00 per month during the term. Paragraph 12 gives the Lessee an election to extend the term of the lease for a further period of seven (7) years and three (3) months. This lease also contains an additional paragraph following paragraph 18 as follows:

> 19. Notwithstanding the title "Lease," this agreement is a sublease and is subject to all of the terms and conditions of the lease dated the 26th day of September, 1941, between C. A. Webb and Leila F. Webb, husband and wife, Lessors, and A. M. Gross, Lessee.

Ex. 18-B. This exhibit comprises the following:

A Lease Indenture in form like Ex. 17-G, dated June 14, 1946, between A. M. Gross, as Lessor, and Standard Oil Company of California, as Lessee, covering the premises described in Ex. 18-A.

Ex. 18-D. This exhibit comprises the following:

A Sublease in form like Ex. 16-B, dated June 14, 1946, from Standard Oil Company of California, as Lessor, to A. M. Gross, as Lessee, for a term commencing July 20, 1946 and ending July 18, 1949, covering the premises described [fol. 2858] in Ex. 18-A, at a rental of $125.00 per month during the term.

Ex. 18-E. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 4, dated June 14, 1946, between Standard Oil Company of California and A. M. Gross, as Dealer. The first clause of the first sentence of paragraph 9 to the first semicolon reads:

> "This agreement shall be operative during the period commencing July 20th, 1946, and ending July 19th, 1949, and from year to year thereafter; . . ."

[fol. 2859] This agreement also contains a rider reading as follows:

> "5a. Notwithstanding the provisions of Paragraph 2 hereof, Dealer agrees that Company shall not be obligated to supply the merchandise mentioned in said paragraph until such time as such merchandise is available to Company from its supplier in quantities sufficient to supply the requirements of its Dealers generally, but no later than one year after the end of the existing National Emergency.
>
> Provided, however, that Paragraph 2 hereof is hereby deemed to be severable from the other terms and provisions of this agreement and may be terminated by 30 days written notice from Company to Dealer of intention so to do. In the event this paragraph is terminated as herein provided this agreement shall remain in full force and effect upon all of its other terms and provisions."

This refers to the premises described in Ex. 18-A.

Ex. 19-A. This exhibit comprises the following:

A lease in form like Ex. 17-F, dated January 5, 1945, from Burnie Hyland, as Lessor, to Standard Oil Company of California, as Lessee, for a term commencing February 1, 1945 and ending December 31, 1949, covering premises in the City of Spokane, Washington, at a rental of $50.00 per month during the term. This Lease also contains the following rider (herein referred to as S-477):

"If during the life of this lease, including all extensions thereof, Lessor shall comply with all of the terms [fol. 2860] and provisions of this and any other agreement now or hereafter operative between Lessor and Lessee, and if Lessor shall not exercise any rights Lessor may have to terminate such agreements (except for Lessee's default); and if there shall be no termination of Lessor's tenancy of the leased premises, then at the expiration of such extended term, or at expiration of the term hereof, in the absence of such extension, Lessee shall, notwithstanding anything to the contrary provided in this lease, give Lessor a Bill of Sale to all of the personal property and trade fixtures placed by Lessee in, under, or upon the leased premises, or purchased by Lessee from Lessor, during the first year of the term hereof."

This Lease also contains the following rider:

"The term of this agreement shall be from February 1, 1945 to December 31, 1949 but if during said period Dealer shall not have purchased from Company 33,000 gallons of lubricating oils and greases, this contract shall continue in full force and effect until such time as said number of gallons of lubricating oils and greases have been purchased by Dealer from Company."

Ex. 19-B. This exhibit comprises the following:

A Lease Indenture in form like Ex. 17-G, dated January 5, 1945, between Burnie Hyland, as Lessor, and Standard Oil Company of California, as Lessee, covering the premises described in Ex. 19-A.

[fol. 2861] Ex. 19-C. This exhibit comprises the following:

A Sublease in form like Ex. 17-C, dated January 5, 1945, from Standard Oil Company, as Lessor, to Burnie Hyland,

as Lessee, for a term commencing February 1, 1945 and ending December 30, 1949, covering the premises described in Ex. 19-A, at a rental of $50.00 per month.

Ex. 20-D. This exhibit comprises the following:

A Lease in form like Ex. 17-F, dated May 1, 1945, from Elmer C. Roberts and wife, Fern S. Roberts; Ray A. Wright and wife, Bessie M. Wright, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing June 1, 1945 and ending May 31, 1955, covering premises in the Village of Parma, Idaho, at a rental of $60.00 per month during the term. This lease contains the rider hereinbefore referred to as S-477.

Ex. 20-E. This exhibit comprises the following:

A Lease Indenture in form like Ex. 17-G, dated May 1, 1945, between the same parties that are referred to in Ex. 20-D and covering the same premises described in Ex. 20-D.

Ex. 20-F. This exhibit comprises the following:

A Sublease in form like Ex. 17-C, dated May 1, 1945, from Standard Oil Company of California, as Lessor, to Elmer C. Roberts and wife, Fern S. Roberts; Ray A. Wright and wife, Bessie M. Wright, as Lessees, for a term commencing June 1, 1945 and ending May 30, 1955, covering the premises described in Ex. 20-D, at a rental of $60.00 per month during the term.

[fol. 2862] Ex. 20-G. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 17-B, except that paragraph 4 therein reads as follows:

> "The petroleum products covered by this agreement shall be sold by Dealer as the products of Company and only under Company's regular trademarks or brands for such products. If Dealer posts a sign or signs advertising the price or prices which Dealer is charging for gasoline or lubricating oils, it is agreed that the design, size, and location of such signs shall be subject to Company's approval."

It is dated May 1, 1945; is between Standard Oil Company of California and Ray A. Wright, as Dealer; and the first

clause of the first sentence of paragraph 9 to the first semicolon reads:

"This agreement shall be operative during the period commencing June 1st, 1945, and ending May 31st, 1965, and from year to year thereafter; . . ."

This refers to the premises described in Ex. 20-D.

Ex. 21-H. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18-E, dated March 26, 1947, between Standard Oil Company of California and Dean B. Whitwood and W. Kenneth Study, as Dealers. The first clause of the first sentence of paragraph 9 to the first semicolon reads:

"This agreement shall be operative during the period commencing April 1, 1947, and continuing concurrently with that certain Sublease dated January 19, 1945, between parties hereto, and from year to year there-
[fol. 2863] after; . . ."

This refers to the premises described in Ex. 21-A.

Ex. 22-A. This exhibit comprises the following:

A Lease in form like Ex. 21-A, dated July 15, 1947, from William S. Darnell and Lucille J. Darnell (his wife), Herbert A. Holyfield and Helen M. Holyfield (his wife), as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing August 1, 1947 and ending July 31, 1947, covering premises in the City of Redding, California, at a rental of $50.00 per month during the term.

Ex. 22-B. This exhibit comprises the following:

A Sublease in form like Ex. 16-B, dated July 15, 1947, from Standard Oil Company of California, as Lessor, to William S. Darnell and Lucille J. Darnell (his wife) and Herbert A. Holyfield and Helen M. Holyfield (his wife), as Lessees, for a term commencing August 1, 1947 and ending July 30, 1957, covering the premises described in Ex. 22-A, at a rental of $233.33 per month.

Ex. 22-C. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18-E, dated April 15, 1946, between Standard Oil Company of California

and W. S. Darnell, as Dealer. The first clause of the first sentence of paragraph 9 to the first semicolon reads:

> "This agreement is operative during the period commencing May 1, 1946, and ending April 30, 1956, and from year to year thereafter; . . ."

This refers to the premises described in Ex. 22-A.

[fol. 2864] Ex. 22-F. This exhibit comprises the following:

A Lease in form like Ex. 21-A, dated October 24, 1944, from Orpha C. Thatcher and W. F. Crist, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing October 1, 1944 and ending December 31, 1955, covering premises described in Ex. 22-A, at a rental of $100.00 per month to December 31, 1945 and $300.00 per month thereafter.

Ex. 22-G. This exhibit comprises the following:

A Lease Indenture in form like Ex. 17-G, dated October 24, 1944, between the same parties and covering the same premises as are described in Ex. 22-F.

Ex. 22-H. This exhibit comprises the following:

A Sublease in form like Ex. 16-B, dated April 15, 1946, from Standard Oil Company of California, as Lessor, to W. S. Darnell and Lucille J. Darnell, as Lessees, for a term commencing May 1, 1946 and ending April 30, 1956, covering the premises described in Ex. 22-F, at a rental of $362.50 per month, but providing that no rental shall be due until the first of the month next succeeding the completion of construction of a truck service station upon the leased premises.

Ex. 23-A. This exhibit comprises the following:

A Lease in form like Ex. 21-A, dated August 15, 1941, from Sandercock Transfer Company, a corporation, as Lessor, to Standard Oil Company of California, as Lessee, for a term commencing November 15, 1941 and ending November 14, 1951, covering premises in the County of San Luis Obispo, California, at a rental of $100.00 per month during the term.

[fol. 2865] Ex. 23-B. This exhibit comprises the following:

A Lease Indenture in form like Ex. 17-G, dated August 15, 1941, between the same parties and covering the same premises which are referred to in Ex. 23-A.

Ex. 23-C. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18-E, dated July 19, 1946, between Standard Oil Company of California and Ransome Company, a corporation, as Dealer. The first clause of the first sentence of paragraph 9 to the first semicolon reads:

> "This agreement shall be operative during the period commencing August 1st, 1946, and ending November 13th, 1951, and from year to year thereafter; . . ."

This refers to the premises described in Ex. 23-A.

Ex. 23-G. This exhibit comprises the following:

A Lease in form like Ex. 21-A, dated April 4, 1945, from George J. Wheat and Ethel B. Wheat, his wife, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing April 1, 1945 and ending March 31, 1955, covering premises in the County of Santa Barbara, California, at a rental of $95.00 per month.

Ex. 23-H. This exhibit comprises the following:

A Lease Indenture in form like Ex. 17-G, dated April 4, 1945, between the same parties and covering the same premises which are referred to in Ex. 23-G.

Ex. 23-I. This exhibit comprises the following:

A Sublease in form like Ex. 16-B, dated January 14, 1948, from Standard Oil Company of California, as Lessor, [fol. 2866] to I. H. Estabrook, as Lessee, for a term commencing March 1, 1948 and ending March 30, 1955, covering the premises which are described in Ex. 23-G, at a rental of $212.66 per month.

Ex. 23-J. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18-E, except that it does not contain paragraph 5(a). It is dated Janu-

ary 14, 1948; is between Standard Oil Company of California and L. H. Estabrook, as Dealer; and the first clause of the first sentence of paragraph 9 to the first semicolon reads:

> "This agreement shall be operative during the period commencing March 1, 1948, and ending March 30, 1955, and from year to year thereafter; . . ."

This refers to the premises described in Ex. 23-G.

Ex. 23-L. This exhibit comprises the following:

A Lease Indenture in form like Ex. 17-G, dated June 4, 1943, between the same parties and covering the same premises as are referred to in Ex. 23-K.

Ex. 23-M. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 4, dated March 4, 1948, between Standard Oil Company of California and Walter F. Hannah, as Dealer. The first clause of the first sentence of paragraph 9 to the first semicolon reads:

> "This agreement shall be operative during the period commencing March 14, 1948, and ending March 13, 1949, and from year to year thereafter; . . ."

This refers to the premises described in Ex. 23-K.

[fol. 2867] Ex. 23-P. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18-E, dated February 1, 1946, between Standard Oil Company of California and Verne Mortimer, as Dealer. The first clause of the first sentence of paragraph 9 to the first semicolon reads:

> "This agreement shall be operative during the period commencing February 1st, 1946, and ending January 31st, 1947, and from year to year thereafter; . . ."

This refers to the premises at 304 East "A" Street, Ontario, California.

Ex. 25. This exhibit comprises the following:

A Sublease in form like Ex. 17-C, dated November 1, 1944, from Standard Oil Company of California, as Lessor, to

J. G. Ferrick and J. W. Knott, as Lessees, for a term commencing December 1, 1944 and ending November 29, 1949, covering premises in the City of Los Angeles, California, at a rental of one-half cent for each gallon of gasoline delivered at the leased premises, but not less than $75.00 per month;

Also a Dealer Agreement TBA in form like Ex. 4, dated October 1, 1947, between Standard Oil Company of California and J. G. Ferrick and J. W. Knott, as Dealers, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing October 1, 1947, and ending November 29, 1949, and from year to year thereafter; . . .";

[fol. 2868] Also a letter dated November 1, 1944 from Standard Oil Company of California to J. G. Ferrick and J. W. Knott referring to the premises described in said Sub-lease and stating that notwithstanding the provisions thereof and until 30 days after the written notice referred to in paragraph 12 of a Dealer Agreement dated November 1, 1944 is given, it is agreed that the rental required to be paid by said Ferrick and Knott under paragraph 3 of said Sublease shall be $75.00 per month and that paragraph 4 of said Sublease shall be suspended.

Ex. 26. This exhibit comprises the following:

An Agreement of Conditional Sale between Standard Oil Company of California, as Seller, and A. Cohen doing business at Long Beach Boulevard at Olive Street in the City of Compton, California, as Buyer, covering certain equipment, and dated May 10, 1946;

Also a written Assignment of his right, title and interest under said Agreement of Conditional Sale effective August 24, 1946, from A. Cohen to Clifton S. Ford, said Assignment being consented to by Standard Oil Company of California and bearing endorsement by Clifton S. Ford agreeing to be bound thereby;

Also a written Assignment, effective October 13, 1947, of his right, title and interest under said Agreement of Conditional Sale by Clifton S. Ford to John William Mardon, consented to by Standard Oil Company of Cali-

fornia and bearing endorsement of John William Mardon agreeing to be bound thereby;

Also a Dealer Agreement TBA in form like Ex. 4, dated [fol. 2869] October 9, 1947, between Standard Oil Company of California and John William Mardon, as Dealer, relating to premises of the Dealer at 825 Long Beach Boulevard, Compton, California, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing October 13, 1947, and ending October 11, 1948, and from year to year thereafter; . . .",

said Dealer Agreement TBA having annexed thereto the Schedule of Posted Prices of Atlas Tires, Tubes, Batteries and Other Accessories which is annexed to Ex. 17-B;

Also a letter agreement dated October 9, 1947, between Standard Oil Company of California and John William Mardon, making reference to said Dealer Agreement TBA of October 9, 1947, and stating that the Company agreed to suspend payments thereunder from October 13, 1947 to January 12, 1948 and agreed to accept during said period in lieu of such suspended payments in advance on the first day of each month the sum of $2.75 and in addition thereto one cent for each gallon of gasoline delivered at the station by the Company, but not less than $100.00 per month.

Ex. 27. This exhibit comprises the following:

An Agreement of Conditional Sale between Standard Oil Company of California, as Seller, and G. G. Stewart and Evelyn Stewart, his wife, to do business at 17904 Clark Street, Bellflower, California, dated February 23, 1948, covering certain equipment at a total selling price including [fol. 2870] sales tax of $280.86;

Also a Dealer Agreement TBA in form like Ex. 4, dated January 29, 1948, between Standard Oil Company of California and G. G. Stewart, as Dealer, referring to the Dealer's premises at SE corner of Rose and Clark, Bellflower, California, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing February 27, 1948, and ending February 26, 1949, and from year to year thereafter; . . ."

Ex. 28. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 4, dated October 6, 1947, between Standard Oil Company of California and William T. King, as Dealer, referring to the Dealer's premises at Front and Main Streets, Rio Vista, California, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing January 1, 1948, and ending December 31, 1952, and from year to year thereafter; . . .";

Also a letter dated March 1, 1944, from William T. King and Alice E. King to Standard Oil Company of California, referring to an agreement dated December 8, 1937, covering the use and occupancy of premises at Front and Main Streets, Rio Vista, California, and stating that the writers of the letter have appointed Wm. Graham as their agent for the sale of petroleum products and other goods and that the Company is authorized to make delivery of mer- [fol. 2871] chandise to him and receive payment from him therefor and that the Company is directed to pay him rentals due the writers and to collect from him any rental payments payable by the writers.

Ex. 29. This exhibit comprises the following:

An Agreement of Conditional Sale, dated June 21, 1946, between Standard Oil Company of California, as Seller, and Edgar P. Reese doing business at 7th and H. Streets, Sacramento, California, as Buyer, covering certain equipment at a total selling price including sales tax of $75.34;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated January 1, 1946, between Standard Oil Company of California and Edgar P. Reese, as Dealer, referring to the Dealer's location at 7th and H. Streets, Sacramento, California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing January 1, 1946, and ending December 31, 1950, and from year to year thereafter; . . ."

Ex. 30. This exhibit comprises the following:

A lease in form like Ex. 17-F, dated April 10, 1941, from Frank A. DeLay and Lulu F. DeLay, his wife, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing June 1, 1941 and ending May 31, 1951, covering premises situated in the City of Courtland, California, at a rental of $10.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated [fol. 2872] April 10, 1941, between the same parties and covering the same premises as are described in said Lease of April 10, 1941;

Also a Sublease in form like Ex. 16-B, dated May 7, 1946, from Standard Oil Company of California, as Lessor, to Gordon B. Waterworth, as Lessee, for a term commencing June 1, 1946 and ending May 30, 1951, covering the same premises which are described in said Lease of April 10, 1941, at a rental of $23.92 per month;

Also an Agreement of Conditional Sale, dated March 12, 1947, between Standard Oil Company of California, as Seller, and Gordon B. Waterworth and Rena M. Waterworth, his wife, as Buyers, covering certain equipment at a total selling price including sales tax of $230.62;

Also a letter dated March 31, 1947, from Gordon B. Waterworth and Rena M. Waterworth to Standard Oil Company of California, stating that in consideration of the installation of additional facilities at the service station referred to in said Sublease of May 7, 1946, the writers of the letter agree to pay for the use of said facilities commencing May 1, 1947 and ending May 31, 1956 the sum of $2.19 in addition to the charge specified for the use of other facilities at said station;

Also a document executed and acknowledged by Standard Oil Company of California consenting to the execution of a certain Trust Deed and consenting that the Lease of April 10, 1941 shall be subordinate thereto;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated May 7, 1946, between Standard Oil Company of California and Gordon B. Waterworth, as Dealer, referring to the Dealer's premises at Courtland, California, and the [fol. 2873] first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing June 1, 1946, and ending May 31, 1951, and from year to year thereafter; . . .";

Also an Assignment by Gordon B. Waterworth and Rena M. Waterworth to Joe M. Morgan, effective October 10, 1947, of the assignor's right, title and interest in and to said Lease of May 10, 1941 and said Sublease of May 7, 1946 and said Dealer Agreement TBA of May 7, 1946 and said Agreement of Conditional Sale dated March 12, 1947, consented to by Standard Oil Company of California and bearing endorsement by Joe M. Morgan agreeing to be bound by the obligations of the said Lease and Sublease;

Also an Assignment by Lula F. DeLay to Richard Harlan and Virginia Harlan, effective February 15, 1945, of all of the assignor's right, title and interest in and to said Lease of April 10, 1941 and a certain Dealer Agreement of April 10, 1941, consented to by Standard Oil Company of California and bearing the endorsement of said Richard Harlan and Virginia Harlan agreeing to be bound by all of the provisions of the obligations thus assigned;

Also an Assignment by Richard Harlan and Virginia Harlan to Earl Anshutz and Leonora Anshutz, his wife, effective November 1, 1945, of the assignor's right, title and interest in a certain Lease dated April 10, 1945, consented to by Standard Oil Company of California and bearing the endorsement of Earl Anshutz and Leonora [fol. 2874] Anshutz agreeing to perform the provisions of the obligations assigned;

Also an Assignment by Earl Anshutz and Leonora E. Anshutz to Gordon B. Waterworth and Rena M. Waterworth, his wife, effective February 1, 1946, of all of the assignors' right, title and interest in and to a certain Lease dated April 10, 1945 and a certain Dealer Agreement dated October 30, 1945, consented to by Standard Oil Company of California and bearing the endorsement of Gordon B. Waterworth and Rena M. Waterworth agreeing to be bound by the provisions of the obligations assigned.

Ex. 31. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 4 with the Schedule of Posted Prices for Atlas Tires, Tubes, Batteries and Other Accessories which is annexed to Ex. 17-B annexed thereto, dated April 15, 1947, between Standard Oil Company of California and A. J. Knutson, as Dealer,

the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing April 1, 1947, and ending March 31, 1948, and from year to year thereafter; . . ."

Also a letter from Alex J. Knutson to Standard Oil Company of California, dated June 19, 1947, making reference to said Dealer Agreement TBA and agreeing to pay for the use of additional facilities commencing July 1, 1947 and ending June 30, 1956 the sum of $2.20 per month.

[fol. 2875] Ex. 32. This exhibit comprises the following:

A Lease in form like Ex. 17-F, dated April 27, 1945, from Gibson L. Lord and Joyce D. Lord, his wife, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing July 1, 1945 and ending June 30, 1955, covering premises in the City of Issaquah, Washington, at a rental of $30.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated April 27, 1945, between the same parties and covering the same premises as are referred to in said Lease of April 27, 1945;

Also a letter from Gibson Lord to Standard Oil Company of California, dated February 1, 1948, making reference to said Lease of April 27, 1945 and giving notice that the writer had appointed A. H. Tiekamp agent for the sale of products and authorizing Company to make deliveries and rental payments to him and to collect rental payments from him;

Also a letter from Gibson Lord to Standard Oil Company of California, dated October 1, 1947, making reference to said Lease of April 27, 1945 and giving notice that the writer had appointed J. E. Lindsey agent for the sale of products and authorizing Company to make deliveries and rental payments to him and to collect rental payments from him;

Also a letter from Gibson Lord to Standard Oil Company of California, dated May 19, 1947, making reference to said Lease of April 27, 1945 and giving notice that the writer had appointed E. L. Haskins agent for the sale of products and authorizing Company to make deliveries and [fol. 2876] rental payments to him and to collect rental payments from him;

Also a letter from Gibson Lord to Standard Oil Company of California, dated February 1, 1947, making reference to said Lease of April 27, 1945 and giving notice that the writer had appointed E. L. Haskins and F. E. Rowan agents for the sale of products and authorizing Company to make deliveries and rental payments to him and to collect rental payments from him;

Also a Bill of Sale dated August 22, 1945 from Gibson L. Lord and Joyce D. Lord to Standard Oil Company of California selling the latter certain equipment for a total price of $150.00;

Also a Bill of Sale dated April 27, 1945 from Gibson L. Lord and Joyce D. Lord to Standard Oil Company of California selling the latter certain equipment for a total price of $1451.27;

Also a Sublease in form like Ex. 16-B, dated April 27, 1945, from Standard Oil Company of California, as Lessor, to Gibson L. Lord and Joyce D. Lord, his wife, as Lessees, for a term commencing July 1, 1945 and ending June 29, 1955, covering the same premises as are described in said Lease of April 27, 1945, at a rental of $42.54;

Also an Agreement in writing between Gibson L. Lord and Joyce D. Lord, as first parties, and Standard Oil Company of California, as second party, dated August 5, 1946, modifying said Sublease of April 27, 1945 by extending the term thereof to October 30, 1956 and providing for a rental of $30.00 per month commencing July 1, 1945 and [fol. 2877] ending October 31, 1946 and a rental of $42.54 per month commencing November 1, 1946 and ending October 30, 1956 and granting second party the right to extend the term of said lease for a period of five (5) years commencing November 1, 1956;

Also a Dealer Agreement TBA in form like Ex. 17-B, dated April 27, 1945, between Standard Oil Company of California and Gibson L. Lord, as Dealer, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing July 1, 1945, and ending June 30, 1955, and from year to year thereafter; . . ."

Ex. 33. This exhibit comprises the following:

A Lease in form like Ex. 17-F, dated September 11, 1946, from R. V. Tangney and Elizabeth M. Tangney, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing December 1, 1946 and ending November 30, 1957, covering premises in the City of Seattle, Washington, at a rental of $40.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated September 11, 1946, between the same parties and covering the same premises as are referred to in said Lease of September 11, 1946;

Also a Sublease in form like Ex. 16-B, dated September 11, 1946, from Standard Oil Company of California, as Lessor, to R. V. Tangney and Elizabeth M. Tangney, as Lessees, for a term commencing December 1, 1946 and ending November 29, 1957, covering the premises described in said Lease of September 11, 1946, at a rental of $102.50 [fol. 2878] per month from December 1, 1946 to November 30, 1951 and at a rental of $40.00 per month commencing December 1, 1951;

Also an Agreement of Conditional Sale, dated February 16, 1948, between Standard Oil Company of California, as Seller, and R. V. Tangney doing business at Seattle, Washington, as Buyer, covering certain equipment at a total selling price including sales tax of $50.47;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated September 11, 1946, between Standard Oil Company of California and R. V. Tangney, as Dealer, referring to Dealer's premises at Seattle, Washington, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing December 1st, 1946, and ending November 30th, 1957, and from year to year thereafter; . . ."

Ex. 34. This exhibit comprises the following:

A Distributor Agreement in form like Ex. 2, dated August 25, 1938, between Standard Oil Company of California and M. K. Wilson, as Distributor, for the initial period commencing August 20, 1938 and ending August 19, 1939, referring to the Distributor's station located at Champion and Cornwall Street, Bellingham, Washington, annexed

to which Distributor Agreement is a Schedule of Posted Prices for Atlas Tires, Tubes, Batteries and Other Accessories like the Schedule annexed to Ex. 17-B;

Also an Assignment dated September 29, 1942, by M. K. Wilson to W. B. Starry of the assignor's right, title and [fol. 2879] interest under said Distributor Agreement, consented to by Standard Oil Company of California and bearing endorsement by W. B. Starry agreeing to perform the terms of said agreement;

Also an Assignment dated October 10, 1943, by W. B. Starry to Floyd Fesler, of all of the assignor's right, title and interest in and to said Distributor Agreement, consented to by Standard Oil Company of California and bearing endorsement by Floyd Fesler agreeing to perform the conditions of said Distributor Agreement;

Also a letter from Standard Oil Company of California dated June 6, 1947 to Floyd Fesler referring to said Distributor Agreement reducing the rental thereunder to three-fourths cent per gallon, effective July 1, 1947;

Also a letter agreement dated April 25, 1945, between Standard Oil Company of California and Floyd Fesler, referring to said Distributor Agreement and modifying the paragraph in said agreement entitled "Quantity" by eliminating therefrom the words "and Distributor agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station."

Ex. 35. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 4, dated September 10, 1947, between Standard Oil Company of California and J. P. McDonald, as Dealer, referring to Dealer's premises at 7235 Sandpoint Way, Seattle, Washington, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> [fol. 2880] "This agreement shall be operative during the period commencing October 1, 1947, and ending July 30, 1952, and from year to year thereafter; . . ."

Ex. 36. This exhibit comprises the following:

A Lease in form like Ex. 17-F, dated May 3, 1946, from Arthur Lee Willson, as Lessor, to Standard Oil Company of California, as Lessee, for a term commencing August 1, 1946 and ending July 31, 1953, covering premises in the

City of Seattle, Washington, at a rental of $150.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated May 3, 1946, between the same parties and covering the same premises which are referred to in said Lease of May 3, 1946;

Also a Bill of Sale, dated August 14, 1946, from Standard Oil Company of California to Arthur Lee Willson selling and transferring to the latter certain service station improvements and equipment located at 1st Ave. No. & Boston Street, Seattle, Washington;

Also a Sublease in form like Ex. 16-B, dated May 3, 1946, from Standard Oil Company of California, as Lessor, to Arthur Lee Willson, as Lessee for a term commencing August 1, 1946 and ending July 30, 1953, covering the premises which are described in said Lease of May 3, 1946, at a rental of $35.00 per month;

Also a Dealer Agreement TBA in form like Ex. 4, dated May 3, 1946, between Standard Oil Company of California and A. L. Willson, as Dealer, referring to the Dealer's premises at 1st Ave. North and Boston Streets, Seattle, Washington, the first clause of the first sentence of para- [fol. 2881] graph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing August 1, 1946, and ending July 31, 1953, and from year to year thereafter; . . .",

annexed to which is the Schedule of Posted Prices of Atlas Tires, Tubes, Batteries and Other Accessories in form like the Schedule annexed to Ex. 17-B.

[fol. 2882] Ex. 37. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 17-B, dated September 11, 1944, between Standard Oil Company of California and E. G. McMoran, as Dealer, referring to the Dealer's premises at 2500 East 55th Street, Seattle, Washington, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing August 15, 1944, and ending August 14, 1945, and from year to year thereafter; . . .";

Also an Assignment, effective November 10, 1944, by E. G. McMoran to Ronald C. Ingersoll, of the assignor's

right, title and interest under said Dealer Agreement TBA, consented to by Standard Oil Company of California and bearing endorsement by Ronald C. Ingersoll agreeing to be bound by the terms of said agreement;

Also an Assignment, effective April 4, 1945, by Ronald C. Ingersoll to J. C. Morton, of the assignor's right, title and interest under said Dealer Agreement TBA, consented to by Standard Oil Company of California and bearing endorsement by J. C. Morton agreeing to be bound by the terms of said agreement;

Also an Assignment, effective July 17, 1945, by J. C. Morton to Larry Christenson, of the assignor's right, title and interest under said Dealer Agreement TBA, consented to by Standard Oil Company of California and bearing endorsement by Larry Christenson agreeing to be bound by the terms of said agreement;

Also an Assignment, effective March 6, 1946, by Larry [fol. 2883] Christenson to Peter W. Argenti, of the assignor's right, title and interest under said Dealer Agreement TBA, consented to by Standard Oil Company of California and bearing endorsement by Peter W. Argenti agreeing to be bound by the terms of said agreement.

Ex. 38. This exhibit comprises the following:

A Lease in form like Ex 17-F, dated February 1, 1946, from Terrence E. Coogan and Marguerite E. Coogan, his wife, as Lessors, and Standard Oil Company of California, as Lessee, for a term commencing June 1, 1946 and ending May 31, 1956, describing premises in the City of Midway, Washington, at a rental of $30.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated February 1, 1946, between the same parties and covering the same premises which are described in said Lease of February 1, 1946;

Also a Sublease in form like Ex. 16-B, dated February 1, 1946, from Standard Oil Company of California, as Lessor, to Terrence E. Coogan and Marguerite E. Coogan, his wife, as Lessees, for a term commencing June 1, 1946 and ending May 30, 1956, covering the same premises which are described in said Lease of February 1, 1946, at a rental of $40.43 per month;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated February 1, 1946, between Standard Oil Company of California and Terrence E. Coogan, as Dealer, referring

to the Dealer's premises in the city of Midway, Washington, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

[fol. 2884] "This agreement shall be operative during the period commencing June 1, 1946, and ending May 30, 1956, and from year to year thereafter; . . .";

Also an agreement dated July 16, 1946, between Terrence E. Coogan and Marguerite E. Coogan, as first parties, and Standard Oil Company of California, as second party, making reference to said Sublease providing for a rental reduction.

Ex. 39. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18-E, dated October 27, 1946, between Standard Oil Company of California and R. M. Hadley and F. S. Evans, as Dealer referring to the Dealer's premises at 23rd and Colby, Everett, Washington, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing September 1, 1946, and ending November 29, 1950, and from year to year thereafter; . . ."

Ex. 40. This exhibit comprises the following:

A Lease in Form like Ex. 21-A, dated February 12, 1948, from Louis Peretti and Jessie Peretti, his wife, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing April 1, 1948 and ending September 30, 1953, covering premises in the City of Renton, Washington, at a rental of $125.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated February 12, 1948, between the same parties and covering the same premises as are referred to in said Lease of February 12, 1948;

[fol. 2885] Also a Dealer agreement TBA in form like Ex. 4, dated February 12, 1948, between Standard Oil Company of California and Louis Peretti, as Dealer, the first clause of the first sentence of paragraph 9 to the first semicolon reading;

"This agreement shall be operative during the period commencing April 1st, 1948 and ending September 30th, 1953, and from year to year thereafter: . . .";

Also a letter agreement dated February 12, 1948, between Standard Oil Company of California and Thomas W. Dinning and Lena Dinning, providing that a lease dated June 10, 1943 and all rights and liabilities of the parties thereunder shall terminate effective as of March 31, 1948.

Ex. 41. This exhibit comprises the following:

A Lease dated October 17, 1938, from W. D. Gibbon, as Lessor, to Standard Oil Company of California, as Lessee, for a term commencing November 1, 1938 and ending October 31, 1943, covering premises in the City of Maple Valley, Washington, at a rental of $12.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated October 17, 1938, between the same parties and describing the same premises which are referred to in said Lease of October 17, 1938;

Also a letter agreement dated April 5, 1943, between Standard Oil Company of California and W. D. Gibbon, extending the term of said Lease of October 17, 1938 for five (5) years commencing November 1, 1943;

[fol. 2886] Also a Sublease in form like Ex. 16-B, dated April 2, 1946, from Standard Oil Company of California, as Lessor, to Chester Gibbon and Rosetta A. Gibbon, his wife, as Lessees, for a term commencing June 1, 1946 and ending October 30, 1958, covering the same premises which are referred to in said Lease of October 17, 1938, at a rental of $20.52 per month between June 1, 1946 and October 31, 1948, and a rental of $17.64 per month between November 1, 1948 and May 31, 1956, and a rental of $12.00 per month between June 1, 1956 and October 30, 1958;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated April 2, 1946, between Standard Oil Company of California and Chester Gibbon and Rosetta A. Gibbon, as Dealer, referring to the Dealer's premises at Maple Valley, Washington, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing June 1st, 1946, and ending October 31st, 1958, and from year to year thereafter; . . .";

Also a letter dated January 16, 1947, from Chester Gibbon to Standard Oil Company of California, making reference to said Dealer Agreement TBA and notifying the Company

of the appointment of R. A. Glidewell and W. B. Mitchell as the writer's agent for the receipt and sale of petroleum products and the making and collection of rental payments;

Also an Assignment, effective January 1, 1945, by Chester Gibbon, Administrator for the Estate of W. D. Gibbon, [fol. 2887] Deceased, to Chester Gibbon and Rosetta A. Gibbon, of the assignor's right, title and interest in a Lease dated October 17, 1938 and a Dealer Agreement dated October 17, 1938, consented to by Standard Oil Company of California and bearing endorsement by the assignees agreeing to perform the conditions of the obligations assigned;

Also a letter dated April 2, 1946, from Chester Gibbon and Rosetta A. Gibbon to Standard Oil Company of California, making reference to a Lease of October 17, 1938 covering the premises referred to in said Sublease of April 2, 1946 and for valuable consideration agreeing that the Company shall have the option to extend said Lease for a further period of five (5) years from November 1, 1958;

Also a letter agreement dated April 2, 1946, between Chester Gibbon and Rosetta A. Gibbon and Standard Oil Company of California, making reference to a Lease dated October 17, 1938 covering premises at Maple Valley, Washington, and agreeing that the term of said Lease may be extended for ten (10) years from November 1, 1948;

Also a letter dated October 25, 1938, from Chester Gibbon and Rosetta A. Gibbon to Standard Oil Company of California, referring to a Lease dated October 17, 1938 and consenting to a Sublease dated October 17, 1938 between W. D. Gibbon and Standard Oil Company of California and granting the latter the right to remove property, including fixtures placed upon the leased premises, upon the expiration or sooner termination of said Sublease.

[fol. 2888] Ex. 42. This exhibit comprises the following:

A Lease in form like Ex. 17-F, dated December 27, 1945, from Alvin E. Trautman and Beatrice Trautman, his wife, and Gordon G. Spurling, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing January 1, 1946 and ending December 31, 1955, covering premises in the County of Snohomish, Washington, at a rental of $45.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated December 27, 1945, between the same parties and covering the

same premises which are referred to in said Lease of December 27, 1945;

Also a Sublease in form like Ex. 16-B, dated December 27, 1945, from Standard Oil Company of California, as Lessor, to Alvin E. Trautman and Beatrice Trautman, his wife, and Gordon G. Spurling, as Lessees, for a term commencing January 1, 1946 and ending December 30, 1955, covering the premises described in said Lease of December 27, 1945, at a rental of $58.19 per month;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated December 27, 1945, between Standard Oil Company of California and Alvin E. Trautman and Gordon G. Spurling, as Dealer, referring to the Dealer's premises at Route 3, Everett, Washington, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing January 1, 1946, and ending December 30, 1955, and from year to year thereafter; . . .";

[fol. 2889] Also an Agreement of Conditional Sale, dated January 30, 1947, between Standard Oil Company of California and Alvin E. Trautman and Gordon G. Spurling doing business at Everett, in the County of Snohomish, Washington, covering certain equipment for a total selling price including sales tax of $215.00.

Ex. 43. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 17-B, dated August 10, 1945, between Standard Oil Company of California and Russell Stephens, as Dealer, referring to the Dealer's place of business at Henderson, Nevada, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing August 10, 1945, and ending August 30, 1953, and from year to year thereafter; . . .";

Also an Amendment to such Dealer Agreement TBA, dated December 1, 1945, between the parties thereto, changing the provisions of said Dealer Agreement TBA with respect to the monthly amount to be paid by the Dealer for the use of facilities;

Also a letter agreement between the parties to said Dealer Agreement TBA, dated July 2, 1947, terminating said Dealer Agreement TBA, effective July 31, 1947.

Ex. 44. This exhibit comprises the following:

A Lease in form similar to Ex. 17-F, dated June 5, 1941, from Charles Moore and Onna G. Moore, his wife, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing August 1, 1941 and ending July 31, 1961, [fol. 2890] covering premises at Las Vegas, Nevada, at a rental of $2440.00 for the first 240 months of the term and then thereafter a rental of $40.00 per month;

Also a Sublsease in form like Ex. 23-F, dated April 1, 1942, from Standard Oil Company of California, as Lessor, to Walter D. Hoge and Elizabeth Hoge, his wife, for a term commencing April 1, 1942 and ending July 30, 1961, covering the premises described in said Lease of June 5, 1941, at a rental of $57.79 per month;

Also a letter from Walter D. Hoge to Standard Oil Company of California, dated May 1, 1942, agreeing to pay the Company for the use of facilities the additional sum of $1.75 per month;

Also a letter from W. D. Hoge to Standard Oil Company of California, dated October 12, 1942, agreeing to pay the Company the additional sum of $1.15 per month for the use of certain additional facilities;

Also a document 3/28/42, signed by Chas. Moore and Onna G. Moore, assigning to Walter D. Hoge and Elizabeth Hoge the assignor's right, title and interest in said Lease of June 5, 1941, consented to by Standard Oil Company of California and bearing endorsement by the assignees agreeing to perform the covenants of the instrument assigned;

Also an Assignment, effective November 1, 1945, by Walter D. Hoge and Elizabeth Hoge to Floyd F. Johnson and Helen A. Johnson, his wife, of all of the assignors' right, title and interest under the Lease of June 5, 1941 and the Sublease of April 1, 1942 and Agreements of April 1, 1942, May 1, 1942, October 12, 1942 and March 6, 1944, consented [fol. 2891] to by Standard Oil Company of California and bearing the endorsement of the assignees agreeing to be bound by the terms of the obligations assigned;

Also agreements between Standard Oil Company of California and Floyd F. Johnson and Helen A. Johnson, dated

October 25, 1945, February 18, 1946, and September 4, 1946, relating to changes in rentals and term of the Sublease;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated October 25, 1945, between Standard Oil Company of California and Floyd F. Johnson, as Dealer, referring to Dealer's place of business at Las Vegas, Nevada, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing November 1, 1945, and ending October 31, 1955, and from year to year thereafter; . . ."

Ex. 45. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18-E, dated March 1, 1946, between Standard Oil Company and Louis S. Crawford, referring to the latter's place of business at Alhambra, California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing March 1st, 1946, and ending February 28, 1956, and from year to year thereafter; . . ."

Ex. 46. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 17-B, dated March 24, 1947, between Standard Oil Company of Califor-[fol. 2892] nia and W. A. Russell and C. L. Russell, referring to the latter's place of business at San Gabriel, California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing April 1, 1947, and ending May 31, 1950, and from year to year thereafter; . . .";

Also a letter agreement dated September 11, 1947, between Standard Oil Company of California and W. A. Russell and C. L. Russell, referring to said Dealer Agreement TBA and containing an agreement on the part of Russell brothers to pay a rental of $3.75 per month for the use of a large size Zeon Chevron Gas Station Sign.

Ex. 47. This exhibit comprises the following:

An Agreement of Conditional Sale, dated February 1, 1947, between Standard Oil Company of California and

A. N. De Rush of Rosemead, California, covering a Battery Charger, the total selling price including sales tax being stated to be $220.38;

Also an Agreement of Conditional Sale, dated July 1, 1946, between Standard Oil Company of California and A. N. De Rush, covering service station plant and equipment for a total selling price including sales tax of $546.54;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated May 20, 1946, between Standard Oil Company of California and A. N. De Rush, referring to the latter's place of business at Rosemead, California, and the first clause of the first sentence of paragraph 9 to the first semicolon [fol. 2893] reading:

> "This agreement shall be operative during the period commencing June 1, 1946, and ending May 30, 1951, and from year to year thereafter; . . .";

Also an Assignment, effective September 1, 1947, by A. N. DeRush to S. P. Myers of all his right, title and interest in and to said Dealer Agreement TBA, consented to by Standard Oil Company of California and bearing endorsement by S. P. Myers agreeing to perform the obligations of said agreement.

Ex. 48. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18-E, dated August 23, 1945, between Standard Oil Company of California and Dwight W. Shirk, as Dealer, referring to the latter's place of business at La Verne, California, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing September 1, 1945, and ending August 31, 1946, and from year to year thereafter; . . .";

Also a letter dated August 23, 1945 from Dwight W. Shirk to Standard Oil Company of California notifying the Company of the appointment of Ben J. Wells, Jr. as Shirk's agent for the sale of petroleum products under said Dealer Agreement TBA;

Also a Lease in form similar to Ex. 17-F, dated September 10, 1941, from Dwight W. Shirk and Hazel Shirk, his

wife, to Standard Oil Company of California, for a term commencing November 1, 1941 and ending October 31, 1956, [fol. 2894] covering premises in the City of La Verne, California, at a rental of $41.70 per month, payable $7500.00 forthwith as advance rental, said sum to be applied as rental for the entire term;

Also a Lease Indenture in form like Ex. 17-G, dated September 10, 1941, between the same parties and covering the same premises which are referred to in the Lease of September 10, 1941;

Also a Sublease in form like Ex. 23-F, dated September 10, 1941, from Standard Oil Company of California, as Lessor, to Dwight W. Shirk and Hazel Shirk, as Lessees, for a term commencing November 1, 1941 and ending October 30, 1956, covering the premises described in said Lease of September 10, 1941, at a rental of $1.00 per month;

Also a letter dated September 10, 1941, from Dwight W. Shirk to Standard Oil Company of California, whereby the signer agreed not to enter into the service station business in La Verne, directly or indirectly, or to hold stock or financial interest in a service station or garage in the City of La Verne, California, within one year from date.

Ex. 49. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 4, dated September 25, 1947, between Standard Oil Company of California and George V. Bissonette and Loyce Champion, as Dealers, referring to the Dealers' place of business at Glendora, California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> [fol. 2895] "This agreement shall be operative during the period commencing September 27, 1947, and ending September 26, 1948, and from year to year thereafter; . . .";

Also a Lease in form like Ex. 21-A, dated September 26, 1945, from Ellis J. Nemeyer and Blenn Nemeyer, his wife, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing October 1, 1945 and ending September 30, 1950, covering premises in the City of Glendora, California, at a rental of one cent for each gallon of gasoline delivered by the Lessee to the leased premises, but not less than $55.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated September 26, 1945, between the same parties and covering the same premises which are referred to in the Lease of September 26, 1945;

Also an Assignment by Ellis J. Nemeyer, effective February 24, 1947, to Loyce B. Champion and Kathleen Champion and George V. Bissonnette and Elizabeth C. Bissonnette, of all the assignor's right, title and interest in and to the Lease of September 26, 1945, consented to in writing by Standard Oil Company of California and bearing endorsement by the assignees agreeing to be bound by the obligations of said Lease;

Also a letter agreement dated October 11, 1945, between Standard Oil Company of California and Ellis J. Nemeyer, by which the Company agreed at the expiration of said Lease of September 26, 1945, to give Nemeyer a Bill of Sale to all the personal property and trade fixtures placed by [fol. 2896] Lessor upon the leased premises or purchased by Lessee from Lessor during the first year of the term of said Lease of September 26, 1945;

Also a letter agreement between George V. Bissonnette and Loyce Champion and Standard Oil Company of California, dated September 25, 1947, amending said Dealer Agreement TBA with respect to amounts to be paid thereunder by the Dealer for the use of the Company's facilities;

Also a letter agreement dated February 10, 1948, between Standard Oil Company of California and George V. Bissonnette and Loyce Champion, amending said Dealer Agreement TBA with respect to amounts to be paid thereunder by the Dealer for the use of the Company's facilities.

Ex. 50. This exhibit comprises the following:

A Lease in form similar to Ex. 17-F, dated March 22, 1941, from Utah Service, Inc., as Lessor, to Standard Oil Company of California, as Lessee, for a term commencing May 1, 1941 and ending April 30, 1946, covering premises at Springville, Utah, at a rental of $100.00 per month;

Also an Agreement, dated April 8, 1946, between Utah Service, Inc. and Standard Oil Company of California, extending the term of said Lease of March 22, 1941 to April 30, 1951 and providing for a rental of one and one-half cents per gallon of gasoline delivered to the leased premises in lieu of the rental provided in said Lease of March 22, 1941;

Also a Sublease in form like Ex. 23-F, dated March 22, 1941, from Standard Oil Company of California, as Lessor, to Utah Service, Inc., as Lessee, for a term commencing [fol. 2897] May 1, 1941 and ending April 29, 1946, covering the premises described in said Lease of March 22, 1941, at a rental of $25.00 per month;

Also an Agreement, dated April 8, 1946, between Standard Oil Company of California and Utah Service, Inc., extending the term of said Sublease to April 29, 1951 and providing that the rental shall be one-half cent per gallon for each gallon of gasoline delivered on the leased premises, by or upon the order of the Lessor, in lieu of the rental provided for in said Sublease;

Also a Dealer Agreement in form like Ex. 16-C, dated March 22, 1941, between Standard Oil Company of California and Utah Service, Inc., as Dealer, referring to the same premises which are referred to in said Sublease and providing that said Dealer Agreement shall be operative from and after May 1, 1941, and from year to year thereafter, but that either party may terminate such agreement at the end of the first six (6) months of any contract year or at the end of any year upon thirty (30) days' notice;

Also a letter agreement, dated April 24, 1945, between Standard Oil Company of California and Utah Service, Inc., providing that paragraph 1 of said Dealer Agreement shall be altered to read as follows:

> "Company agrees to sell to Dealer, and Dealer agrees to buy from Company and stock and offer for sale all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer in the [fol. 2898] conduct of his business on the premises herein described. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by Standard Stations, Inc. in Dealer's vicinity."

Ex. 51. This exhibit comprises the following:

A Dealer Agreement in form like Ex. 16-C, dated June 7, 1944, between Standard Oil Company of California and Fred A. Carleson Company, as Dealer, referring to the Dealer's premises as 535 South Main Street, Salt Lake City,

Utah, and providing that said agreement shall be operative during a period commencing August 1, 1944 and ending July 31, 1949, and from year to year thereafter, but that either party may terminate the agreement at the end of the first six (6) months of any contract year or at the end of any such year on thirty (30) days' written notice;

This agreement contains a rider numbered "3a" which reads as follows:

> "3a. In addition to the sale of Company's lubricating oils on the premises described herein, the sale of Quaker State and Pennzoil Motor Oil by Dealer thereon shall not be deemed by Company to be a breach of this Agreement provided such sale does not constitute more than Five per cent (5%) of the total lubricating oil sales on the premises."

This agreement also contains a rider which is substituted in place of paragraph 6 of Exhibit 16C, and which reads as follows:

> [fol. 2899] "6. Company agrees, while this agreement is in effect, to maintain all facilities placed or owned by Company on the property, except the service station building. Dealer agrees to keep said building in good condition and repair at Dealer's own cost and expense. Dealer further agrees to protect, defend, and hold harmless the Company against all claims for damage to property (including Dealer's property), or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about the said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder."

Also a Lease in form like Ex. 17-F, dated June 7, 1944, from Fred A. Carleson Company, as Lessor, to Standard Oil Company of California, as Lessee, for a term commencing August 1, 1944 and ending July 31, 1949, covering premises in Salt Lake City, Utah, at a rental of $50.00 per month;

This lease contains a rider number "2a" which reads as follows:

"2a. Lessor agrees not to store, handle, distribute, sell or advertise for sale, on premises owned, or leased by lessor, adjoining the demised premises; petroleum products in competition with those marketed by lessee, not to suffer or permit, by lease, license, or other agree-[fol. 2900] ment, any person, persons, firm, or corporation, to store, handle, distribute, sell or advertise for sale on said adjoining premises, petroleum products in competition with those marketed by lessee, except as provided in paragraph 4a. of Sublease dated June 7, 1944, between Standard Oil Company of California and Fred A. Carleson Company, a partnership, and as likewise provided in paragraph 3a. of Dealer Agreement dated June 7, 1944, between Standard Oil Company of California and Fred A. Carleson Company, a partnership."

Also, a rider numbered "4a." which reads as follows:

"4a. Lessee agrees to maintain in good condition and repair the following described service station equipment:

1—Wayne Mod. 60 Computing Pump #343
1—Wayne Mod. 60 Computing Pump #618
1—Wayne Mod. 50 Computing Pump #7009
3—Globe Hoists
2—1000 gal. U. G. Tank
1—500 gal. U. G. Tank
1—Champion Air Compressor, Mounted Unit Mod. O.E. 42802 #35854, 5 H.P. Motor on 20# x 54" tank
1—Hobart Air Compressor, 4 H.P. Motor mounted on 24" x 30" tank"

In lieu of paragraph 12, as appearing in Ex. 17-F, the following is substituted:

"12. If, during the term of this lease, the Lessor has not purchased from the Lessee a total of 300,000 [fol. 2901] gallons of gasoline and a total of 20,000 gallons of lubricating oils and greases for delivery upon the demised premises, the term of this lease shall be automatically extended until such time as

300,000 gallons of gasoline and 20,000 gallons of lubricating oils and greases have been so purchased and delivered."

Also a Sublease in form like Ex. 17-C, dated June 7, 1944, from Standard Oil Company of California, as Lessor, to Fred A. Carleson Company, as Lessee, for a term commencing August 1, 1944, and ending July 30, 1949, covering the same premises described in said Lease of June 7, 1944, at a rental of $50.00 per month;

This sublease contains a rider numbered "4a." which reads as follows:

"4a. In addition to the sale of Lessor's lubricating oils on the premises described herein, the sale of Quaker State and Pennzoil Motor Oil by Lessee thereon shall not be deemed by Lessor to be a breach of this agreement provided such sale does not constitute more than Five per cent (5%) of total lubricating oil sales on the premises."

[fol. 2902] Also a copy of a Promissory Note dated June 7, 1944, made by Fred A. Carleson Company, in the sum of $6,000.00, payable to the order of Standard Oil Company of California on or before August 1, 1949;

Also an Agreement between Fred A. Carleson Company and Standard Oil Company of California, dated June 7, 1944, providing that Standard Oil Company of California will credit upon said Promissory Note three-fourths cent for each gallon of gasoline and five cents for each gallon of lubricating oils or greases purchased by Fred A. Carleson Company and delivered by Standard Oil Company of California upon the leased premises, also to credit upon said Promissory Note five per cent (5%) of Standard Oil Company of California's ex-tax posted tank truck price at the time and place of delivery on all lubricating oils purchased by Fred A. Carleson Company and delivered by Standard Oil Company of California.

Ex. 52. This exhibit comprises the following:

A Dealer Agreement in form like Ex. 1, dated November 15, 1944, between Standard Oil Company of California and Stanley R. Thillman and Harry N. Balding, as Dealer, referring to the Dealer's place of business as 2546 Tele-

graph Ave., Berkeley, California, and providing an initial term commencing December 1, 1944 and ending November 30, 1949.

Also a Sublease and Agreement, dated November 15, 1944, between J. W. Dana, as Lessor, and Stanley R. Thillman and Harry N. Balding and Leila V. Balding, as Lessees, for a term commencing December 1, 1944 and ending November 30, 1949, covering premises in the City of [fol. 2903] Berkeley, California, at a rental of $300.00 per month;

This Sublease and Agreement also contains the following provision:

> "13. Lessee agrees that it will perform the obligations incumbent upon the Lessor by reason of paragraph 4 in the sublease from Standard Oil Company of California to J. W. Dana dated November 15, 1944, and referred to herein, said paragraph referring to the selling, handling and using of petroleum products."

Also a Sublease in form like Ex. 17-C, dated November 15, 1944, from Standard Oil Company of California, as Lessor, to J. W. Dana, as Lessee, for a term commencing December 1, 1944 and ending November 29, 1954, covering the same premises described in said Sublease and Agreement of November 15, 1944, at a rental of $115.49 per month, Lessor agreeing to apply the sum of $40.49 as payment on account of installments due under the provisions of a certain note dated December 1, 1944.

Ex. 54: This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 17-B, dated August 15, 1946, between Standard Oil Company of California and H. E. Bagley, as Dealer, referring to the latter's place of business as 3698 East Colorado, Pasadena, California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing September 1st, 1946, and ending May 31st, 1950, and from year to year thereafter;
>
> . . . "

[fol. 2904] Ex. 55. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 17-B, dated July 1, 1945, between Standard Oil Company of California and Guy W. Moody, as Dealer, referring to the Dealer's place of business as York and Eagle Rock Boulevards, Los Angeles, California, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing August 1st, 1945, and ending March 31st, [fol. 2905] 1959, and from year to year thereafter; . . .";

Also a Lease dated April 2, 1945, from Guy A. Thompson and Celia C. Thompson, as Lessors, to Guy W. Moody and Winona M. Moody, as Lessees, covering the property referred to in said Dealer Agreement TBA for a term of 14 years commencing April 2, 1945, at a monthly rental during the first 7 years of $45.00 per month plus one-half cent per gallon for each gallon of gasoline in excess of 9,000 gallons served monthly from the leased premises by the Lessee and $50.00 per month plus one-half cent per gallon for each gallon of gasoline in excess of 10,000 gallons sold monthly by the Lessee from said premises during the last 7 years of said term;

Also a copy of a Lease dated September 16, 1939, between Guy A. Thompson and Celia C. Thompson, as Lessors, and Guy W. Moody and Winona M. Moody, as Lessees, covering the same premises for a term of 10 years commencing September 16, 1939;

Also a Lease dated April 7, 1941, between Guy W. Moody and Winona M. Moody, as Lessors, and Standard Oil Company of California, as Lessee, for a term commencing April 15, 1941 and ending September 14, 1949, covering said premises, at a rental of $60.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated April 7, 1941, between the same parties and describing the same premises as are referred to in said Lease of April 7, 1941;

Also an Amendment to said Lease of April 7, 1941, be- [fol. 2906] tween Guy W. Moody and Winona M. Moody, as Lessors, and Standard Oil Company of California, as Lessee, correcting the description of said real property contained in said Lease;

Also an Agreement dated July 1, 1945, between Guy W. Moody and Winona M. Moody and Standard Oil Company of California, terminating said Lease of April 7, 1941;

Also an Agreement dated July 31, 1945, between Guy W. Moody and Winona M. Moody and Guy A. Thompson and Celia C. Thompson and Standard Oil Company of California, by which the Moodys assigned to Standard Oil Company of California all their right, title and interest in and to said Lease from the Thompsons to the Moodys dated April 2, 1945;

Also a Sublease in form like Ex. 16-B, dated July 1, 1945, from Standard Oil Company of California, as Lessor, to Guy W. Moody and Winona M. Moody, his wife, as Lessees, for a term commencing August 1, 1945 and ending March 31, 1959, covering said premises, at a rental of one-half cent for each gallon of gasoline delivered at the premises by the Lessor, but not less than $45.00 per month prior to March 31, 1952 and not less than $50.00 per month prior to March 31, 1959;

Also a letter agreement dated March 19, 1947, between Standard Oil Company of California and Guy W. Moody and Winona M. Moody, making reference to said Sublease of July 1, 1945 and agreeing to the suspension of payments thereuntil until further notice.

Ex. 56. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 17-B, dated May 15, 1947, between Standard Oil Company of California, [fol. 2907] and W. Blevins, as Dealer, referring to the Dealer's place of business as 2270 East Colorado Boulevard, Pasadena, California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing May 19, 1947, and ending May 30, 1950, and from year to year thereafter; . . ."

Also an Agreement of Conditional Sale, dated December 6, 1945, between Standard Oil Company of California and Roy E. Seitz, covering a Battery Charger for a total selling price including sales tax of $215.25;

Also an Assignment by Roy E. Seitz and Anne L. Seitz to W. Blevins, effective June 1, 1947, of all of the assignors' right, title and interest in and to said Agreement of Conditional Sale, consented to by Standard Oil Company of

California and bearing endorsement by W. Blevins agreeing to perform the obligations of said agreement;

Also a letter agreement dated August 1, 1947, between Standard Oil Company of California and W. Blevins, referring to said Dealer Agreement TBA and providing for a suspension of the payments provided for therein from August 1, 1947 until further notice, and in lieu thereof for the payment of $2.75 plus one cent for each gallon of gasoline delivered at the station by the Company during the life of said Dealer Agreement TBA.

Ex. 57. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18-E, dated February 14, 1946, between Standard Oil Company of [fol. 2908] California and Richard Schuld, as Dealer, referring to the Dealer's premises at Beaverton, Oregon, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing June 1, 1946, and ending May 31, 1956, and from year to year thereafter; . . .";

Also a Lease in form like Ex. 17-F, dated February 14, 1946, from Richard Schuld and Hazel Schuld, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing June 1, 1946, and ending May 31, 1956, covering the premises described in said Dealer Agreement TBA, at a rental of $25.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated February 14, 1946, between the same parties and covering the same premises which are referred to in said Lease of February 14, 1946;

Also a letter dated February 1, 1947, from Standard Oil Company of California to Richard Schuld and Hazel Schuld, by which the Company waived its preferential right to purchase the premises under paragraph 14 of said Lease of February 14, 1946;

Also a Sublease in form like Ex. 17-C, dated February 14, 1946, from Standard Oil Company of California, as Lessor, to Richard Schuld and Hazel Schuld, as Lessees, for a term commencing June 1, 1946 and ending May 30, 1956, covering the premises described in said Lease of February 14, 1946, at a rental of $25.00 per month;

Also an Assignment by Richard Schuld and Hazel Schuld to Richard Schuld and Howard P. Swetland, effective [fol. 2909] February 1, 1947, of all of the assignors' right, title and interest under said Lease and Sublease of February 14, 1946 and said Dealer Agreement TBA, said Assignment bearing the written consent of Standard Oil Company of California and endorsement by Richard Schuld and Howard P. Swetland agreeing to perform the terms of the obligations assigned;

Also a letter from Richard Schuld and Howard P. Swetland to Standard Oil Company of California, dated March 18, 1947, by which the assignees agreed to pay the Company monthly the sum of $6.00 in consideration of the installation of certain additional facilities.

Ex. 58. This exhibit comprises the following:

A Petroleum Products and Equipment Agreement in form like Ex. 3, dated October 25, 1946, between Standard Oil Company of California and Iris Wolfe, as Dealer, referring to the Dealer's property at R. 1; St. Helens, Oregon, and providing for a consideration of $13.85 per month and stating that the term of the agreement is from December 1, 1946 to November 30, 1956; a rider designated "Bill of Sale Clause" is attached to this agreement which reads as follows:

> "If, during the life of this agreement, including all extensions thereof, Dealer shall comply with all of the terms and provisions of this and any other agreement now or hereafter operative between Dealer and Company, and if Dealer shall not exercise any rights Dealer may have to terminate such agreements (except for Company's default), and if there shall be no termina- [fol. 2910] tion of Dealer's tenancy of the premises, then at the expiration of such extended term, or at the expiration of the term hereof, in the absence of such extension, Company shall, notwithstanding anything to the contrary provided in this agreement, give dealer a Bill of Sale to all of the personal property and trade fixtures placed by Company in, under, or upon the premises, or purchased by Company from Dealer, during the first year of the term hereof."

Also a Dealer Agreement TBA in form like Ex. 18-E, dated October 25, 1946, between Standard Oil Company of California and Iris Wolfe, as Dealer, referring to the same premises as are referred to in said Petroleum Products and Equipment Agreement, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing December 1, 1946, and ending November 30, 1956, and from year to year thereafter; . . .";

paragraph 13 provides that the said Petroleum Products and Equipment Agreement is not terminated by the Dealer Agreement TBA;

[fol. 2911] Also an Assignment from Iris Wolfe to Warren Guyer and Margie Guyer, effective January 1, 1947, of all of the assignor's right, title and interest in and to said Petroleum Products and Equipment Agreement and said Dealer Agreement TBA, consented to in writing by Standard Oil Company of California and bearing the endorsement of the assignees agreeing to be bound by the terms of said obligations;

Also a letter agreement dated January 28, 1947, between Standard Oil Company of California and Warren Guyer and Margie Guyer, whereby the Company waived payments under said Petroleum Products and Equipment Agreement for a certain period and the term of said agreement was extended for a period equal to the time that said waiver was in force;

Also an Assignment by Warren Guyer and Margie Guyer to I. Wolfe, effective April 1, 1947, of all of the assignors' right, title and interest under said Petroleum Products and Equipment Agreement and said Dealer Agreement TBA, consented to by Standard Oil Company of California and bearing endorsement by the assignee agreeing to be bound by the terms of the obligations assigned;

Also a letter agreement dated August 27, 1947, between Standard Oil Company of California and Iris Wolfe, extending the term of said Petroleum Products and Equipment Agreement to August 31, 1957;

Also a letter dated October 14, 1947, from Iris Wolfe to Standard Oil Company of California, notifying the Company of the appointment of Earl F. Rodgers and Maud A.

[fol. 2912] Rodgers as the agents of Wolfe at the premises referred to in said agreements.

Ex. 59. This exhibit comprises the following:

An Agreement of Conditional Sale, dated April 25, 1947, between Standard Oil Company of California, as Seller, and Edward E. Brown and Elmer F. Brown, as Buyers, covering a Battery Charger for a total selling price including sales tax of $215.00;

Also a Dealer Agreement TBA in form like Ex. 17-B, dated April 25, 1947, between Standard Oil Company of California and Edward E. Brown and Elmer F. Brown, as Dealers, referring to the latter's premises at 15th and Columbia Blvd., St. Helens, Oregon, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing May 1, 1947, and ending April 30, 1952, and from year to year thereafter; . . .";

Also an Assignment by Edward E. Brown and Elmer F. Brown, effective October 23, 1947, to Joseph B. Nolan and Alan A. Renard of all of the assignors' right, title and interest under said Dealer Agreement TBA and said Agreement of Constitutional Sale, consented to in writing by Standard Oil Company of California and bearing the endorsement of the assignees agreeing to perform the terms of the obligations assigned.

Ex. 60. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 17-B, dated August 28, 1945, between Standard Oil Company of California and Ralph L. Carlson and Agnes J. Carlson, as Dealers, [fol. 2913] referring to the Dealers' premises at Oswego, Oregon, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing August 1st, 1945, and ending October 30th, 1951, and from year to year thereafter; . . .";

Also a written Agreement dated July 2, 1946, between Ralph L. Carlson and Agnes J. Carlson and Standard Oil Company of California, providing that the rental under

said Dealer Agreement TBA shall commence on May 1, 1946.

Ex. 61. This exhibit comprises the following:

A Petroleum Products and Equipment Agreement in form like Ex. 3, dated March 14, 1946, between Standard Oil Company of California and Bender Motors, as Dealer, referring to the Dealer's premises at 1st. and A Avenue, Oswego, Oregon, providing for a monthly payment of $16.50 and stating the term of the agreement to be May 1, 1946 to April 30, 1951. (Under this Agreement the Dealer agrees to buy from the Company the Dealer's requirements of petroleum, except gasoline, used or sold or bought to be used or sold by the Dealer at its place of business.)

Also a letter agreement dated May 27, 1946, between Standard Oil Company of California and Bender Motors, agreeing to a reduction of the monthly payment under said Petroleum Products and Equipment Agreement from May 1, 1946 to April 30, 1951;

Also a letter agreement dated May 27, 1946, between [fol. 2914] Standard Oil Company of California and Bender Motors, agreeing to substitu-ion of a Victory Hydraulic Hoist in place of a Globe Hydraulic Hoist;

Also letter agreements between Standard Oil Company of California and Bender Motors, dated November 29, 1946 and August 6, 1947, making certain amendments to said Petroleum Products and Equipment Agreement but not modifying the obligation of the Dealer thereunder to purchase its requirements of petroleum products except gasoline from the Company.

Ex. 62. This exhibit comprises the following:

A Lease in form similar to Ex. 17-F, dated September 5, 1941, from O. W. Hannahs, as Lessor, to Standard Oil Company of California, as Lessee, for a term commencing September 1, 1941 and ending August 30, 1946, covering premises in the City of Portland, Oregon, at a rental of $30.00 per month;

Also a Distributor Agreement in form like Ex. 2, dated September 5, 1941, between Standard Oil Company of California and O. W. Hannahs, for a term commencing September 1, 1941 and ending August 30, 1946, subject however to a cancellation by either party at the end of any six (6)

months period on thirty (30) days' notice, annexed to which is a Schedule of Posted Prices for Atlas Tires, Tubes, Batteries and Other Accessories in form like the Schedule of such prices annexed to Ex. 17-B;

Also a written Agreement dated March 3, 1944, between Standard Oil Company of California and O. W. Hannahs, modifying the provisions of said Distributor Agreement with respect to monthly payments thereunder only;

[fol. 2915] Also an Assignment by O. W. Hannahs to Frank Haynes, dated June 8, 1944, of all of the assignor's right, title and interest in and to said Distributor Agreement and said Lease of September 5, 1941, consented to in writing by Standard Oil Company of California and bearing endorsement by the assignee agreeing to be bound by the terms of the instruments assigned;

Also a letter agreement dated April 20, 1945, between Standard Oil Company of California and Frank W. Haynes, eliminating from the paragraph of said Distributor Agreement entitled "Quantity" the language: "and Distributor agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station.";

Also a Dealer Agreement TBA in form like Ex. 17-B, dated October 1, 1945, between Standard Oil Company of California and Frank W. Haynes, as Dealer, referring to the Dealer's premises at 2429 N. W. Thurman Street (Portland, Oregon), and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing October 1st, 1945, and ending September 30th, 1955, and from year to year thereafter; . . ."

Ex. 63. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 4, dated November 26, 1947, between Standard Oil Company of California and Hal S. Gilbert, as Dealer, referring to the Dealer's premises at Scappoose, Oregon, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> [fol. 2916] "This agreement shall be operative during the period commencing December 1, 1947, and ending

November 30, 1950, and from year to year thereafter; . . ."

Ex. 64. This exhibit comprises the following:

A Lease in form similar to Ex. 17-F, dated February 26, 1947, from Carl L. Cobia and Glena H. Cobia, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing April 1, 1947 and ending March 31, 1957, covering premises in the City of Snowville, Utah, at a rental of $80.00 per month;

Also a Sublease in form like Ex. 16-B, dated February 26, 1947, from Standard Oil Company of California, as Lessor, to Carl L. Cobia and Glena H. Cobia, as Lessees, for a term commencing April 1, 1947, and ending March 30, 1957, covering the premises described in said Lease of February 26, 1947, at a rental of $80.00 per month;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated February 26, 1947, between Standard Oil Company of California and Carl L. Cobia, as Dealer, referring to the Dealer's premises at Snowville, Utah, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing April 1, 1947, and ending March 31, 1957, and from year to year thereafter; . . ."

Also a letter agreement dated December 10, 1947, addressed to Carl L. Cobia, from Standard Oil Company [fol. 2917] of California, signed by W. C. Watson, attorney in fact for Standard Oil Company of California, accepted and agreed to by Carl L. Cobia, which contains the following provisions:

> "Please refer to your lease to us dated February 26, 1947, covering a portion of Section 11, Township 14 North, Range 8 West, in Box Elder County, Utah, and particularly to the provisions of paragraphs numbered 20 and 21 of the lease.
>
> "We propose to pay you the sum of $500.00 when you have completed, at your sole cost and expense, a canopy extending from the service station building over the service station pumps that are located on the leased premises.

"In consideration of our undertaking to pay said sum upon the conditions set forth, you are to release and discharge us from our obligation contained in paragraph 20 of said lease to construct on the leased premises '1—3' x 18" sign from the northeasterly side and roof of the lubrication building to the pump island with two sets of reflectors and bulbs', and also from our obligation contained in paragraph numbered 21 of said lease to give you a bill of sale covering said sign."

Ex. 65. This exhibit comprises the following:

A Promissory Note dated September 10, 1945, made by Vern W. Bowdle and Elaine Virginia Bowdle, in the sum [fol. 2918] of $13,000.00, payable to the order of Standard Oil Company of California in installments;

Also a Chattel Mortgage dated September 11, 1945, made by Vern W. Bowdle and Elaine Virginia Bowdle, as Mortgagors, to Standard Oil Company of California, as Mortgagee, to secure the payment of said Promissory Note covering service station building and fixtures at Salt Lake City, Utah;

Also a Contract dated September 10, 1945, between Standard Oil Company of California, as Seller, and Vern W. Bowdle, as Buyer, providing that the Seller agrees to sell to the Buyer and the Buyer will buy from Seller all the Buyer's requirements of gasoline and other petroleum products used or bought to be used by the Buyer in the conduct of the Buyer's business at the southwest corner of Fourth South and Second West Streets, Salt Lake City, Utah, for a term of five (5) years with option in the Seller to extend the term of the contract for a further period of five (5) years;

Also a letter dated September 10, 1945, from Standard Oil Company of California to Vern W. Bowdle, by which the Company agreed to advance Bowdle $13,000.00 upon completion by him of a service station;

Also a Lease in form like Ex. 16-A, dated September 10, 1945, from Vern W. Bowdle and Elaine Virginia Bowdle, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing November 1, 1945 and ending October 31, 1955, covering premises in the City of Salt Lake, Utah, at a rental of $150.00 per month;

Also a Sublease in form like Ex. 16-B, dated September [fol. 2919] 10, 1945, from Standard Oil Company of California, as Lessor, to Vern W. Bowdle and Elaine Virginia Bowdle, as Lessees, for a term commencing November 1, 1945 and ending October 30, 1955, covering the same premises referred to in said Lease of September 10, 1945, at a rental of $150.00 per month;

Also an Agreement dated April 17, 1946, between Standard Oil Company of California and Vern W. Bowdle and Elaine Virginia Bowdle, whereby the Company agreed at its own cost to install certain equipment and the Bowdles agreed to an increase in the rent under said Sublease from $150.00 per month to $167.81 per month.

Ex. 66. This exhibit comprises the following:

An Agreement of Conditional Sale, dated February 4, 1946, between Standard Oil Company of California, as Seller, and Oswald Cossette of 745 East Colorado Street, Pasadena, California, as Buyer, covering a Battery Charger at a total selling price including sales tax of $215.25;

Also a Dealer Agreement TBA in form like Ex. 17-B, dated May 28, 1945, between Standard Oil Company of California and Oswald Cossette, as Dealer, referring to said premises in Pasadena, California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing June 1st, 1945, and ending August 30th, 1948, and from year to year thereafter; . . ."

[fol. 2920] Ex. 67. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18-E, dated November 1, 1945, between Standard Oil Company of California and James R. Gordon, as Dealer, referring to the Dealer's premises at Niland, California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing November 1st, 1945, and ending October 31st, 1946, and from year to year thereafter; . . .";

Also an Assignment by James R. Gordon to Omar L. Bowen, effective February 1, 1947, of the assignor's right,

title and interest under said Dealer Agreement TBA, consented to in writing by Standard Oil Company of California and bearing an endorsement by the assignee agreeing to perform the terms of said agreement.

Ex. 68. This exhibit comprises the following:

A Lease in form like Ex. 17-F, dated April 9, 1941, from Hubert B. Riggan and Leta H. Riggan, his wife, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing June 1, 1941 and ending May 31, 1951, covering premises in the City of Santa Ana, California, at a rental of $75.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated April 9, 1941, between the same parties and covering the same premises as are referred to in said Lease of April 9, 1941;

Also a Sublease in form like Ex. 23-F, dated April 9, 1941, from Standard Oil Company of California, as Lessor, [fol. 2921] to Hubert B. Riggan and Leta H. Riggan, as Lessees, for a term commencing June 1, 1941 and ending May 30, 1951, covering the same premises which are described in said Lease of April 9, 1941, at a rental of $123.27 per month;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated January 18, 1946, between Standard Oil Company of California and Hubert B. Riggan, as Dealer, referring to the Dealer's premises at Santa Ana, California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing February 1st, 1946, and ending May 30th, 1951, and from year to year thereafter; . . . .";

Also a Bill of Sale dated November 25, 1947, from Hubert B. Riggan and Leta H. Riggan to Standard Oil Company of California, selling to the latter an Electric Computer and an Underground Storage Tank for $550.00;

Also a letter from Hubert B. Riggan to Standard Oil Company of California, dated December 3, 1947, by which the signer agreed to pay to the Company for the use of certain additional facilities at the service station referred to in the other documents, $6.71 per month.

Ex. 69. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18-E, dated October 1, 1945, between Standard Oil Company of California and C. E. Peterson, as Dealer, referring to the Dealer's premises as 3985 Whittier Blvd., Los Angeles, [fol. 2922] California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing October 1, 1945, and ending September 30, 1950, and from year to year thereafter; . . .";

Also an Agreement of Conditional Sale dated October 1, 1946, between Standard Oil Company of California, as Seller, and C. E. Peterson, as Buyer, covering certain equipment for a total selling price including sales tax of $630.19.

Ex. 70. This exhibit comprises the following:

A Lease in form similar to Ex. 17-F, dated April 1, 1941, from James S. Williams and Lola T. Williams, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing June 1, 1941 and ending May 31, 1956, covering premises in the City of Los Angeles, California, at a rental of $30.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated May 2, 1941, between the same parties and covering the same premises which are referred to in said Lease of April 1, 1941;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated May 20, 1946, between Standard Oil Company of California and James S. Williams, as Dealer, referring to the latter's place of business at Los Angeles, California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing June 1st, 1946, and ending May 31st, [fol. 2923] 1956, and from year to year thereafter; . . ."

Ex. 71. This exhibit comprises the following:

A Petroleum Products and Equipment Agreement in form like Ex. 3, dated November 14, 1947, but containing

a Bill of Sale Clause rider as copied in the summary of Exhibit 58 above, between Standard Oil Company of California and E. R. Howard and Eleanor Howard, as Dealers, referring to premises at Phoenix, Arizona, and providing for a term November 15, 1947 to November 14, 1957, provided that if during such term 720,000 gallons of gasoline shall not have been delivered at the premises by the Company, the term of the agreement shall be automatically extended until such time as such quantity shall have been delivered;

Also an Agreement dated February 9, 1948, between Standard Oil Company of California and E. R. Howard and Eleanor Howard, changing the payments to be made under said Petroleum Products and Equipment Agreement monthly from $20.81 to $21.34;

Also a Dealer Agreement TBA in form like Ex. 17-B, dated November 14, 1947, between Standard Oil Company of California and E. R. Howard and Eleanor Howard, as Dealers, referring to the Dealers' property at Phoenix, Arizona, and the first clause of the first sentence of paragraph 9 thereof to the first semicolon reading:

> "This agreement shall be operative during the period commencing November 15, 1947, and ending November 14, 1947, and from year to year thereafter; . . .";

[fol. 2924] by the terms of paragraph 13 it is provided that the Petroleum Products and Equipment Agreement is not superseded by this agreement.

Ex. 72. This exhibit comprises the following:

A Petroleum Products and Equipment Agreement in form like Ex. 3, dated September 5, 1944, between Standard [fol. 2925] Oil Company of California and Fred Erickson, as Dealer, referring to the Dealer's property at Snohomish County, Washington, the term of said agreement being stated to be from October 1, 1944 to September 30, 1954, and the payment to the Company for the use of its facilities to be $5.64 per month;

Also an Assignment by Emil Bovela, effective March 1, 1948, of all of the assignor's right, title and interest under said Petroleum Products and Equipment Agreement of September 5, 1944, to Kenneth S. Smith, bearing the written

consent of Standard Oil Company of California and the endorsement by the assignee agreeing to be bound by the terms of said agreement.

Ex. 73. This exhibit comprises the following:

A Lease in form like Ex. 17-F, dated August 20, 1946, from John Scholtems and Louise Scholtems, as Lessors, to Standard Oil Company of California, as Lessee, for a term of 10 years after a service station shall have been erected on the leased premises which are stated to be located in Kings County, Washington, at a rental of $50.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated August 20, 1946, between the same parties and covering the same premises which are referred to in said Lease of August 20, 1946;

Also a Sublease in form like Ex. 16-B, dated August 20, 1946, from Standard Oil Company of California, as Lessor, to John Scholtems and Louise Scholtems, as Lessees, for the same term less one day as the term stated in said [fol. 2926] Lease of August 20, 1946, at a rental of $91.60 per month;

Also a letter agreement dated August 19, 1947, between Standard Oil Company of California and John Scholtems and Louise Scholtems agreeing that the term of said Lease and Sublease shall commence August 1, 1947.

Also a Dealer Agreement TBA in form like Ex. 18-E, dated August 20, 1946, between Standard Oil Company of California and John Scholtems, as Dealer, referring to the latter's place of business as S. W. Corner of East 95th and 35th N. E., Seattle, Washington, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing on the first day of the first month following the month during which Lessor has erected a service station on said premises and ending Ten (10) years after such commencement, and from year to year thereafter; . . .";

Also an Agreement between Standard Oil Company of California and John Scholtems and Louise Scholtems, dated December 18, 1947, relating to the installation of fluorescent

outline tubing facilities at the service station referred to in said Lease and Sublease;

Also an Agreement between John Scholtens and Louise Scholtens and Seattle Federal Savings and Loan Association, and Standard Oil Company of California, dated February 19, 1947, by which Standard Oil Company of California agreed that its lease from the Scholtens should be subject and subordinate to a mortgage made by the Scholtens to the Loan Association;

[fol. 2927] Also an Agreement of Conditional Sale, dated January 12, 1948, between Standard Oil Company of California, as Seller, and John Scholtens, as Buyer, covering a Spark Plug Servicer at a total selling price including sales tax of $50.47.

Ex. 74. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 4, dated October 14, 1947, between Standard Oil Company of California and James C. Nelson, as Dealer, referring to the Dealer's premises at Seattle, Washington, and the first Clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing October 15, 1947, and ending October 14, 1948, and from year to year thereafter; . . .";

Also an Agreement of Conditional Sale, dated January 15, 1948, between Standard Oil Company of California, as Seller, and James Nelson, as Buyer, covering a Spark Plug Servicer at a total selling price including sales tax of $50.47.

Ex. 75. This exhibit comprises the following:

A Sublease in form like Ex. 16-B, dated April 1, 1945, from Standard Oil Company of California, as Lessor, to Gilbert S. Olson, as Lessee, for a term commencing June 1, 1945 and ending May 30, 1950, covering premises in the City of Los Angeles, California, at a rental of $58.00 per month;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated October 22, 1946, between Standard Oil Company of [fol. 2928] California and Gilbert S. Olson, as Dealer, re-

ferring to the latter's place of business at Los Angeles, California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing November 1st, 1946, and ending March 31st, 1950, and from year to year thereafter; . . ."

Ex. 76. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 17-B, dated November 15, 1945, between Standard Oil Company of California and Lawrence Avakian and Harry A. Dworkin, as Dealers, referring to the Dealer's premises at 2335 East Fourth Street, Los Angeles, California, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing December 1st, 1945, and ending November 30th, 1955, and from year to year thereafter; . . ."

Ex. 77. This exhibit comprises the following:

A Lease in form like Ex. 17-F, dated April 3, 1947, from H. L. Brillhart and Stella Brillhart, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing April 1, 1947 and ending March 31, 1957, covering premises in the City of Los Angeles, California, at a rental of $75.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated April 3, 1947, between the same parties and covering the same premises which are referred to in said Lease of April 3, [fol. 2929] 1947;

Also a Sublease in form like Ex. 16-B, dated April 3, 1947, from Standard Oil Company of California, as Lessor, to H. L. Brillhart and Stella Brillhart, as Lessees, for a term commencing April 1, 1947 and ending March 30, 1957, covering the same premises which are referred to in said Lease of April 3, 1947;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated April 3, 1947, between Standard Oil Company of California and H. L. Brillhart, as Dealer, referring to the latter's premises at Los Angeles, California, and the first

clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing April 1st, 1947, and ending March 30th, 1957, and from year to year therafter;"

Also an Agreement of Conditional Sale, dated October 28, 1947, between Standard Oil Company of California, as Seller, and H. L. Brillhart, as Buyer, covering certain equipment for a total selling price including sales tax of $230.57;

Also a letter agreement dated May 23, 1947, between Standard Oil Company of California and H. L. Brillhart, providing for the suspension of payments under said Dealer Agreement TBA from May 1, 1947 until further notice.

Ex. 78. This exhibit comprises the following:

A Lease in form like Ex. 17-F, dated July 2, 1945, from Heber T. Hall and Margaret M. Hall and John A. Gilbert and Geneva F. Gilbert, as Lessors, to Standard Oil Com- [fol. 2930] pany of California, as Lessee, for a term commencing September 1, 1945 and ending August 31, 1955, covering premises in the City of Roosevelt, Utah, at a rental of $90.00 per month;

Also a Sublease in form like Ex. 16-B, dated July 2, 1945, from Standard Oil Company of California, as Lessor, to Heber T. Hall and Margaret M. Hall and John A. Gilbert and Geneva F. Gilbert, as Lessees, for a term commencing September 1, 1945 and ending August 30, 1955, covering the same premises which are described in said Lease of July 2, 1945, at a rental of $90.00 per month;

Also a Dealer Agreement in form like Ex. 1, dated July 2, 1945, between Standard Oil Company of California and Heber T. Hall and John A. Gilbert, as Dealers, referring to the latter's place of business at Roosevelt, Utah, and providing in paragraph 5 that the initial term thereof shall be from September 1, 1945 to August 31, 1955;

Also a written Agreement between Standard Oil Company of California and Heber T. Hall, Margaret M. Hall, John A. Gilbert and Geneva F. Gilbert, dated January 23, 1946, providing that a certain area shall be released from the operation of said Lease of July 2, 1945;

Also a written Assignment by John A. Gilbert, Geneva F. Gilbert, Heber T. Hall and Margaret M. Hall to John A.

Gilbert and Geneva F. Gilbert, effective May 1, 1947, of all of the assignors' right, title and interest in and to said Lease and Sublease and Dealer Agreement, consented to in writing [fol. 2931] by Standard Oil Company of California and bearing endorsement by the assignee agreeing to perform the terms of the obligations assigned;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated May 1, 1947, between Standard Oil Company of California and John A. Gilbert, as Dealer, referring to the latter's place of business at Roosevelt, Utah, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing May 1, 1947, and ending August 31, 1955, and from year to year thereafter; . . . .";

Also a letter agreement between Standard Oil Company of California and John A. Gilbert and Geneva F. Gilbert, dated August 12, 1947, providing for an extension of the term of the Lease of July 2, 1945 to June 30, 1956;

Also an Agreement of Conditional Sale, dated January 27, 1948, between Standard Oil Company of California, as Seller, and Snow Machinery Co., as Buyer, referring to the latter's place of business at Roosevelt, Utah, and covering a Battery Charger at a total selling price including sales tax of $229.50;

Also an Agreement of Conditional Sale, dated January 27, 1948, between Standard Oil Company of California, as Seller, and Snow Machinery Co., of Roosevelt, Utah, as Buyer, covering a Spark Plug Servicer at a total selling price including sales tax of $49.98;

Also a letter dated January 2, 1948, from John A. Gilbert to Standard Oil Company of California, by which [fol. 2932] Gilbert appointed Snow Machinery Company as his agent for the sale of petroleum products at the premises referred to in said Lease, Sublease, Dealer Agreement and Dealer Agreement TBA with authority to make and collect rental payments and receive deliveries of merchandise.

Ex. 19. This exhibit comprises the following:

A Distributor Agreement in form like Ex. 2, dated June 10, 1941, between Standard Oil Company of California and Rudy Glenn, as Distributor, referring to the Distributor's

place of business at Phoenix, Arizona, for a term commencing June 10, 1941 and ending June 30, 1956, and from year to year thereafter, with provision for termination at the end of any six (6) months period upon thirty (30) days' notice; annexed to said Distributor Agreement is a Schedule of Posted Prices for Atlas Tires, Tubes, Batteries and Other Accessories like the Schedule annexed to Ex. 17-B.

Ex. 80. This exhibit comprises the following:

A Lease in form like Ex. 21-A, dated August 23, 1945, from Harry L. Nace, as Lessor, to Standard Oil Company of California, as Lessee, for a term of five (5) years to commence on the first day of the third month after the month in which government restrictions prohibiting erection of service stations have been removed and the Lessee secures material and equipment necessary to erect a station on the leased premises, which are located in the County of Maricopa, Arizona, at a rental of $50.00 per month plus one cent for each gallon of gasoline in excess of 60,000 gallons delivered by Lessee to the leased premises during a year; [fol. 2933] Also a Lease Indenture in form like Ex. 17-G, dated August 23, 1945, between the same parties and describing the same premises which are referred to in said Lease of August 23, 1945;

Also a letter agreement dated September 11, 1946, between Harry L. Nace and Standard Oil Company of California, designating September 1, 1946 as the commencement of the term of said Lease;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated September 11, 1946, between Standard Oil Company of California and Francis J. Woods, as Dealer, referring to the Dealer's place of business at N. E. Corner of Central Avenue and Mohave Street, Phoenix, Arizona, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing September 11, 1946, and ending September 10, 1947, and from year to year thereafter; . . ."

Ex. 81. This exhibit comprises the following:

A Lease in form like Ex. 17-F, dated November 1, 1946, from Lawrence Wetzel and Jennie Wetzel, as Lessors, to

Standard Oil Company of California, as Lessee, for a term of 10 years commencing on the first day of the first month during which the Lessor has completed on the leased premises the construction of a service station and the Lessee has procured and installed on the leased premises certain items of equipment at a rental of $50.00 per month;

Also a Sublease in form like Ex. 16-B, dated November [fol. 2934] 1, 1946, from Standard Oil Company of California, as Lessor, to Lawrence Wetzel and Jennie Wetzel, as Lessees, covering the same leased premises and for a term of 10 years less one day to commence coincident with the commencement of the term of said Lease of November 1, 1946, at a rental of $50.00 per month;

Also Agreements between Lawrence Wetzel and Jennie Wetzel and Standard Oil Company of California, dated January 21, 1947, establishing February 1, 1947 as the date for the commencement of the term of said Lease and Sublease;

Also a Dealer Agreement TBA in form like Ex. 18-E, dated January 22, 1947, between Standard Oil Company of California and Lawrence Wetzel, as Dealer, describing the Dealer's place of business as 3662 West Van Buren Street, Phoenix, Arizona, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing February 1, 1947, and ending January 31, 1957, and from year to year thereafter; . . .";

Also a letter agreement between Standard Oil Company of California and Lawrence Wetzel, dated February 12, 1947, suspending payments under said Dealer Agreement TBA from February 1, 1947 until further notice;

Also a letter agreement between Standard Oil Company of California and Lawrence Wetzel, dated July 25, 1947, suspending payments under said Dealer Agreement TBA from February 1, 1947 until July 1, 1947.

[fol. 2935] Ex. 82. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 4, dated December 10, 1947, between Standard Oil Company of California and Mark F. Brightenburg, as Dealer, referring to the Dealer's place of business as N.W. Corner of Main

and 2nd South Streets, Brigham City, Utah, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing January 1, 1948, and ending December 31, 1948, and from year to year thereafter: . . ."

Ex. 83. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 4, dated September 3, 1947, between Standard Oil Company of California and Hugh C. Nielsen, as Dealer, referring to the Dealer's place of business at Northeast corner of the intersection of 2nd South and State Streets, Preston, Idaho, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing October 1st, 1947, and ending September 30th, 1948, and from year to year thereafter: . . .";

Also an Assignment by Hugh C. Nielsen to Ariel A. Biggs, effective March 1, 1948, of the assignor's right, title and interest in and to said Dealer Agreement TBA, consented to in writing by Standard Oil Company of California and bearing endorsement by the assignee agreeing to perform the terms of the agreement assigned.

[fol. 2936] Ex. 84. This exhibit comprises the following:

A Lease in form similar to Ex. 17-F, dated June 2, 1941, from Mrs. H. L. and Woody Naylor, as Lessors, to Standard Oil Company of California, as Lessee, for a term commencing August 1, 1941 and ending July 31, 1956, covering premises in Tooele County, Utah, at a rental of $50.00 per month;

Also a Sublease in form like Ex. 23-F, dated June 2, 1941, from Standard Oil Company of California, as Lessor, to Mrs. H. L. Naylor and Woody Naylor, as Lessees, for a term commencing August 1, 1941 and ending July 30, 1956, covering the same premises described in said Lease of June 2, 1941, at a rental of $64.62 per month until July 31, 1951, and thereafter a rental of $50.00 per month;

Also an Agreement dated April 1, 1942, between Mrs. H. L. Naylor and Woody Naylor and Standard Oil Com-

party of California, making certain modifications in the term and rentals payable under said Sublease;

Also a Contract dated July 25, 1946, between Standard Oil Company of California, as Seller, and Mrs. H. L. Naylor and Woody Naylor, as Buyers, providing that the Seller sells to the Buyers and the Buyers buy from the Seller all the Buyers' requirements of gasoline and other petroleum products used or bought to be used by the Buyers in the conduct of the Buyers' business at Knolls, Utah, for a term of five (5) years commencing September 1, 1946, subject to termination upon 90 days' notice by either party. The following provision appears as a rider numbered "2a": [fol. 2937] "Seller may terminate this contract at any time during the term hereof, or any extension thereof, by giving Buyer thirty (30) days' prior written notice of intention to do so";

Also a letter from Standard Oil Company of California [fol. 2938] to Mrs. H. L. Naylor and Woody Naylor, dated January 14, 1943, whereby the Company agreed to accept the sum of $60.45 per month under said Sublease between April 1, 1942 and March 31, 1952;

Also a letter from Standard Oil Company of California to Mrs. H. L. Naylor and Woody Naylor, dated January 20, 1943, by which the Company agreed to accept a rental of $58.66 per month under said Sublease for the period April 1, 1942 to March 31, 1952;

Also a Dealer Agreement TBA in form like Ex. 17-B, dated July 25, 1945, between Standard Oil Company of California and Mrs. H. L. Naylor and Woody Naylor, as Dealers, referring to the Dealers' place of business at Knolls, Utah, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing August 1, 1945, and ending March 31, 1952, and from year to year thereafter; . . . ";

Also a letter from Woody Naylor and Mrs. H. L. Naylor to Standard Oil Company of California, dated July 26, 1946, by which the Naylors agree to pay the Company for certain additional facilities $21.67 per month from September 1, 1946 to August 31, 1951;

Also a letter agreement between Standard Oil Company of California and Woody Naylor and Mrs. H. L. Naylor,

dated January 17, 1947, making certain changes in rental payments.

Also a letter dated October 24, 1941, from Standard Oil Company of California to Mrs. H. L. Naylor and Woody Naylor, directing the latter to make rental payments to [fol. 2939] Standard Stations, Inc., Salt Lake City, Utah;

Also an Assignment from Mrs. H. L. Naylor and Woody Naylor to Harry E. Naylor and Thelma Jennings Naylor, effective March 1, 1947, of their right, title and interest in and to the Lease and Sublease of June 2, 1941, said Dealer Agreement TBA and a tank car contract dated July 25, 1946, consented to in writing by Standard Oil Company of California and bearing endorsement by the assignees agreeing to be bound by the terms of the obligations assigned;

Also a letter from Harry E. Naylor to Standard Oil Company of California, dated October 1, 1947, notifying the Company of the appointment of Harvey L. Naylor as agent at the leased premises at Knolls, Utah.

Ex. 86. This exhibit comprises the following:

A Petroleum Products and Equipment Agreement in form like Ex. 3, dated November 7, 1946, but containing a Bill of Sale Clause rider as copied in the summary of Exhibit 58 above, between Standard Oil Company of California and Jerome S. Vidovich, as Dealer, referring to the Dealer's place of business at Schurz, Nevada, providing for the payment by the Dealer of $15.00 per month for the use of the Company's facilities on said premises and stating that the term of the agreement is from December 1, 1947 to November 30, 1957;

Also a Dealer Agreement TBA in form like Ex. 4, dated November 7, 1947, between Standard Oil Company of California and Jerome S. Vidovich, as Dealer, referring to the Dealer's premises at Schurz, Nevada, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> [fol. 2940] "This agreement shall be operative during the period commencing December 1, 1947, and ending December 1, 1948, and from year to year thereafter;

Ex. 87. This exhibit comprises the following:

A Sublease in form like Ex. 16-B, dated March 7, 1944, from Standard Oil Company of California, as Lessor, to Orville C. Musser, as Lessee, for a term commencing February 1, 1944 and ending May 30, 1946, covering premises situated in the City of Portola, California, at a rental of one and one-half cents for each gallon of gasoline delivered at said premises by the Lessor, but not less than $100.25 per month;

Also a Distributor Agreement in form like Ex. 2, dated March 7, 1944, between Standard Oil Company of California and Orville C. Musser, as Distributor, stating that the term thereof is from February 1, 1944 to May 30, 1946, subject to termination at the end of any six (6) months period by either party upon 30 days' notice and referring to the Distributor's place of business as located at Beckwith and Sierra Street, Portola, California;

Also a letter from Orville C. Musser to Standard Oil Company of California, dated April 5, 1944, acknowledging receipt from the Company of certain equipment;

Also a letter from Standard Stations, Inc. to Orville C. Musser, dated March 7, 1944, agreeing to accept between February 1, 1944 and April 30, 1944 under said Sublease a rental of one cent per gallon with no minimum;

[fol. 2941] Also a letter dated May 18, 1944, from Standard Stations, Inc. to Orville C. Musser, agreeing to accept between May 1, 1944 and July 31, 1944 under said Sublease rental at the rate of one cent per gallon with no minimum;

Also a letter agreement dated May 21, 1945, between Standard Oil Company of California and Orville C. Musser, referring to paragraph entitled "Quantity" in said Distributor Agreement and eliminating from said paragraph the words "and Distributor agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station";

Also a letter from Standard Oil Company of California to Orville C. Musser, dated December 31, 1946, notifying Musser that the Company was cancelling previous rental reductions and that effective January 1, 1947 the rental under the Sublease of March 7, 1944 would be as stated therein.

Ex. 88. This exhibit comprises the following:

A Petroleum Products and Equipment Agreement in form like Ex. 3, dated November 22, 1944, but containing a Bill of Sale Clause under as copied in the summary of Exhibit 58 above, between Standard Oil Company of California and Hughes & Clapp, as Dealer, referring to the Dealer's place of business at 2201 Westwood Blvd., West Los Angeles, California, providing for a payment by the Dealer of $43.66 per month for the use of the Company's facilities and stating that the term of the agreement was from January 1, 1945 to December 31, 1949, but that if during said period the Dealer had not purchased from the Company 36,000 gallons of lubricating oils and greases, the [fol. 2942] agreement should continue in force until such time as said number of gallons had been purchased.

Ex. 89. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 17 B, dated July 1, 1946, between Standard Oil Company of California and James C. Callicoatt, as Dealer, referring to the Dealer's place of business at 1697 Pacific Avenue, Venice, California, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

> "This agreement shall be operative during the period commencing July 1st, 1946, and ending June 30th, 1947, and from year to year thereafter; . . ."

Ex. 90. This exhibit comprises the following:

A Distributor Agreement in form like Ex. 2, dated August 15, 1940, between Standard Oil Company of California and Warren F. Emerson, as Distributor, for a period commencing August 16, 1940 and ending August 15, 1941, and from year to year thereafter, either party having the right of termination at the end of any six (6) months period upon thirty (30) days notice and referring to the Distributor's place of business as 7200 Fulton Street, San Francisco, California.

Ex. 91. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18 E, dated November 15, 1945, between Standard Oil Company of Cali-

fornia and Warren F. Emerson, as Dealer, referring to the Dealer's place of business at 7200 Fulton Street, San Francisco, California, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

[fol. 2943] "This agreement shall be operative during the period commencing November 15, 1945, and ending November 16, 1946, and from year to year thereafter;

Ex. 92. This exhibit comprises the following:

A Sublease dated April 12, 1944, from Standard Oil Company of California, as Lessor, to Walter V. Bretthauer, as Lessee, for a term commencing March 23, 1944 and ending March 22, 1949, covering premises in the City of Reno, Nevada, at a rental of one and one-half cents for each gallon of gasoline delivered at said premises by the Lessor, but not less than $247.28 per month;

Also a Distributor Agreement in form like Ex. 2, dated April 12, 1944, between Standard Oil Company of California and Walter V. Bretthauer, as Distributor, for a term commencing March 23, 1944 and ending March 22, 1949, either party having the right to terminate the agreement at the end of any six (6) months period upon thirty (30) days notice and referring to the Distributor's place of business at Court and Granite Streets, Reno, Nevada;

Also a letter from Standard Stations, Inc. to Walter V. Bretthauer, dated April 12, 1944, by which the Company agreed to accept between March 23, 1944 and June 23, 1944 rental at the rate of one cent per gallon with no minimum in lieu of the amount specified in said Sublease;

Also a letter from Walter V. Bretthauer to Standard Oil Company of California, dated April 15, 1944, acknowledging the receipt of certain equipment.

[fol. 2944] Ex. 93. This exhibit comprises the following:

A Sublease in form like Ex. 16-B, dated March 13, 1947, from Standard Oil Company of California, as Lessor, to Walter V. Bretthauer, as Lessee, for a term commencing February 1, 1947 and ending September 20, 1950, covering premises in the City of Reno, Nevada, at a rental of $169.25;

The following provision is "3A" of this sublease:

"3A. Lessee, during the term of this lease, or any extension or extensions thereof, hereby agrees to use and occupy said leased premises solely and only as a service station for the sale of gasoline, oils and lubricants, within the conditions and limitations of this lease, and kindred products used in the operation of motor vehicles, and for the care, storage or repairing of said vehicles.

"Lessee further agrees not to engage in any other business, save and except the service station business as herein provided, to give faithful service and attention to said business and to keep said service station open for business for the general public a reasonable and adequate number of hours each day, and that a breach of any of the conditions and provisions herein contained shall forthwith constitute a forfeiture of this lease, and lessor may forthwith thereafter and peaceably enter into and take possession of said leased premises."

[fol. 2945] Also a Dealer Agreement TBA in form like Ex. 18-E, dated February 13, 1947, between Standard Oil Company of California and Walter V. Bretthauer, as Dealer, referring to the Dealer's place of business at Court and Granite Streets, Reno, Nevada, and the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing February 1, 1947, and ending January 31, 1952, and from year to year thereafter; . . . ";

Also an Agreement of Conditional Sale, dated September 22, 1945, between Standard Oil Company of California, as Seller, and Walter V. Bretthauer, as Buyer, covering a Battery Charger at a total selling price including sales tax of $210.00.

Ex. 94. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 17-B, dated December 12, 1945, between Standard Oil Company of California and Ralph A. Bryan, as Dealer, referring to the

Dealer's premises at 401 Broadway, Santa Monica, California, the first clause of the first sentence of paragraph 6 to the first semicolon reading:

> [fol. 2946] "This agreement shall be operative during the period commencing January 1, 1946, and ending December 31, 1946, and from year to year thereafter; . . ."

Also a letter agreement dated March 2, 1945, between Standard Oil Company of California and Ralph A. Bryan, by which the Company agreed to make certain changes in the payments provided in said Dealer Agreement TBA to be made to the Company for the use of its facilities.

Also a letter agreement dated December 12, 1947, between W. G. Watson, Attorney in fact, Standard Oil Company of California and Ralph A. Bryan, terminating Dealer Agreement dated December 12, 1945.

Ex. 95. This exhibit comprises the following:

A Lease in form like Ex. 16-A, dated December 27, 1945, from Samuel M. Blasker and Marie V. Blasker, his wife, and Morris E. Greenspon and Zelma R. Greenspon, his wife, as Lessors, and Standard Oil Company of California, as Lessee, for a term commencing March 1, 1946 and ending October 31, 1960, covering premises in the City of San Diego, California, at a rental of $200.00 per month;

Also a Lease Indenture in form like Ex. 17-G, dated December 27, 1945, between the same parties and covering the same premises which are referred to in the Lease of December 27, 1945;

Also an Agreement dated December 27, 1945, between Samuel M. Blasker, Marie V. Blasker, Morris E. Greenspon and Zelma R. Greenspon, as first parties, and Standard Oil Company of California, as second party, under which first parties, in consideration of a Lease and Sublease to be executed, agreed to build and construct a service station, and second party, upon completion of said service station, [fol. 2947] agreed to pay first parties $20,000.00;

Also a Sublease in form like Ex. 16-B, dated December 27, 1945, from Standard Oil Company of California, as Lessor, to Samuel M. Blasker, Marie V. Blasker, Morris E. Greenspon and Zelma R. Greenspon, as Lessees, for a term commencing March 1, 1946 and ending October 30, 1960,

covering premises in the City of San Diego, California, at a rental of $200.00 per month.

A Dealer Agreement TBA in form like Ex. 18-E, dated December 27, 1945, between Standard Oil Company of California and Samuel M. Barker and Mamie E. Green son, as Dealers, referring to the Dealer's place of business at Southeast Corner of Pacific Avenue and Market Drive, San Diego, California, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing March 1st, 1946, and ending [illegible] 30th, 1960, and from [illegible] to year thereafter;

Ex. 96. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 4, dated August 1, 1945, between Standard Oil Company of California and E. V. Parker, as Dealer, referring to the Dealer's place of business at Day and Cuyler Streets, San Francisco, California, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing [illegible] 1, 1945, and ending [illegible] 31, 1950, and from year to year thereafter;

[fol. 2948] Ex. 97. This exhibit comprises the following:

A Dealer Agreement TBA in form like Ex. 18-E, dated July 1, 1946, between Standard Oil Company of California and Neil Andries, as Dealer, referring to the Dealer's place of business at Ocean Avenue and Jules Street, San Francisco, California, the first clause of the first sentence of paragraph 9 to the first semicolon reading:

"This agreement shall be operative during the period commencing July 1, 1946, and ending June 30, 1951, and from year to year thereafter;

Also an Assignment by Preston G. Barnes to R. L. Strong, effective December 1, 1946, of the assignor's right, title and interest in and to said Dealer Agreement TBA, said assignment being consented to by Standard Oil Company of

California and bearing the endorsement of R. L. Stroup agreeing to perform all of the terms of the obligations assigned.

Ex. 18. This exhibit comprises the following:

A Distributor Agreement in form like Ex. 2, dated October 22, 1943, between Standard Oil Company of California and W. L. Benson, as Distributor, for a term commencing October 22, 1943 and ending October 21, 1944, with the right on the part of either party to terminate such agreement at the end of any six (6) months period upon thirty (30) days' notice, the place of business of the Distributor being stated to be located at 19th and Guerrero Streets, San Francisco, California; attached to this Distributor Agreement is a Schedule of Posted Prices for Atlas Tires, Tubes, [fol. 2949] Batteries and Other Accessories like the Schedule annexed to Ex. 17-B;

Also a Sublease in form like Ex. 23-F, dated October 22, 1943, from Standard Oil Company of California, as Lessor, to W. L. Benson, as Lessee, for a term commencing October 22, 1943 and ending October 21, 1944, covering premises in the City of San Francisco, California, at a rental of one cent per gallon for each gallon of gasoline delivered upon said premises by or upon the order of the Lessor, but not less than $188.22 per month;

Also an Assignment dated May 1, 1944, by Wm. L. Benson to Augustus O. Carey, of all of the assignor's right, title and interest in and to said Sublease dated October 22, 1943 and said Distributor Agreement, said assignment bearing the written consent of Standard Oil Company of California and an endorsement by the assignee agreeing to perform the terms of the instruments assigned.

In the District Court of the United States

[Title omitted]

Praecipe Designating the Portions of the Record To Be Incorporated in the Transcript on Appeal—Filed July 20, 1948

To the Clerk, District Court of the United States for the Southern District of California, Central Division:

The defendants, in conformity with Stipulation Designating Portions of the Record to be Included in the Transcript on Appeal, direct that in preparing the record on appeal herein to the Supreme Court of the United States, you include the following:

1. Complaint.

2. Notice of Hearing of Motions for Stay of Proceedings, [fol. 2951] (and in the alternative) to Dismiss, (and in the alternative) to Strike from Complaint, for a More Definite Statement of Bill of Particulars, and for Inspection, together with said Motions, and Affidavits and Points and Authorities Supporting the Same.

3. Decision on Motions of Defendants, dated July 14, 1947.

4. Order on Motions, dated July 14, 1947.

5. Answer (of defendants, Standard Oil Company of California and Standard Stations, Inc.) with acknowledgment of service thereof.

6. Stipulation dated April 6, 1948, for Amendment of Answer and Order thereon dated April 19, 1948.

7. Opinion of the Court, dated June 7, 1948.

8. Decision and Order, dated June 8, 1948.

9. Notice of Motion for Reopening, Reargument and Reconsideration and for a Decision in Favor of Defendants.

10. Memorandum (printed) Showing that the Decision of the Supreme Court in United States v. Columbia Steel Co. Requires a Decision in Favor of Defendants, dated June 16, 1948.

11. Receipt (of Notice of Motion for Reopening, Reargument and Reconsideration and for a Decision in Favor of Defendants and accompanying Memorandum).

12. Supplemental Opinion, dated June 28, 1948.

13. Order, dated June 28, 1948.

[fol. 2952] 14. Findings of Fact and Conclusions of Law, dated June 30, 1948.

15. Final Judgment, dated June 30, 1948.

16. Petition for Appeal, dated July 20, 1948.

17. Citation, dated July 20, 1948.

18. Statement as to Jurisdiction, dated July 20, 1948 (omitting therefrom copy of the Opinion of June 7, 1948 and copy of the Supplemental Opinion of June 28, 1948, but showing by an appropriate note appended thereto that said copies were annexed to the original).

19. Statement Calling Attention to the Provisions of Supreme Court Rule 12(3), dated July 20, 1948.

20. Order Allowing Appeal, dated July 20, 1948.

21. Assignment of Errors and Prayer for Reversal, dated July 20, 1948.

22. Proof of Service, dated July 20, 1948.

23. Bond on Appeal, dated July 12, 1948.

24. Stipulation Designating Portions of the Record to be Included in the Transcript on Appeal (pursuant to Supreme Court Rule 10), dated July 20, 1948.

25. Praecipe Indicating the Portions of the Record to be Incorporated in the Transcript on Appeal, dated July 26, 1948.

26. The Reporter's Transcript of Proceedings at the trial of the above entitled cause, being a record of the proceedings before the above entitled Court on May 4, 5, 6, 12, 13, 17, 18, 19, 20, 21, 25, 26, and 27, 1948.

[fol. 2953] 27. Exhibits received in evidence at the trial, as follows:

Plaintiff's Exhibits 1 to 12, inclusive, 16 to 16F inclusive, 17 to 17-I inclusive, 18, 18C, 19, 19D to 19F inclusive, 20 to 20C inclusive, 21 to 21G inclusive, 22, 22D, 22E, 22-I, 23, 23D to 23F inclusive, 23K, 23N, 23O, 23Q to 23X inclusive, 24 to 24-I inclusive, 53, 53A, 85, 99 to 105 inclusive, (being all exhibits offered by plaintiff which were received in evidence, except those exhibits which are referred to in the Condensed Statement annexed hereto).

Defendants' Exhibits B to Z inclusive, AA to OO inclu-

sive, QQ to ZZ, inclusive, and AAA to GGG, inclusive, (being all exhibits offered by defendants which were received in evidence);

and that the papers aforesaid comprising said transcript be fastened together in one or more volumes of convenient size, paged consecutively and indexed, and transmitted under the hand and seal of the above entitled Court to the Clerk of the Supreme Court, all in the manner and form and within the time required by law and the rules of the Supreme Court.

Dated, July 20, 1948.

Lawler, Felix & Hall, Pillsbury, Madison & Sutro, Marshall P. Madison, John M. Hall. By John M. Hall, Attorneys for defendants (and appellants).

[fol. 2954] Received copy of the within Praecipe this 20th day of July, 1948.

William C. Dixon, Special Assistant to the Attorney General; W. Alan Thody, Special Assistant to the Attorney General; Lawrence W. Somerville, Special Attorney; Edwin U. Driscoll, Special Attorney. By William C. Dixon, Attorneys for Plaintiff (and appellee).

[fol. 2955] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD DESIRED BY PLAINTIFF TO BE INCLUDED IN TRANSCRIPT ON APPEAL. Filed July 30, 1948.

To the Clerk, District Court of the United States for the Southern District of California, Central Division:

Pursuant to Rule 10 of the Revised Rules of the Supreme Court of the United States, as amended, counsel for and on behalf of the plaintiff herein, the United States of America,

designates the following additional portions of the record desired to be included in the transcript on appeal:

1. The reporter's transcript of proceedings at the trial of the above entitled cause, being a record of the proceedings before the above entitled court on June 28, 1948.

Dated: July 30, 1948.

William C. Dixon, Special Assistant to the Attorney General; W. Alan Thosly, Special Assistant to the Attorney General; Lawrence W. Somerville, Special Attorney; Edwin U. Driscoll, Special Attorney. By William C. Dixon, Attorneys for the Plaintiff.

[fol. 2956] Received copy of the within this 29th day of July, 1948.

Lawler, Felix & Hall. By John M. Hall, Attorney for Defendants.

[fols. 2957-2959] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 2960] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed September 23, 1948

Come now Standard Oil Company of California and Standard Stations, Inc., appellants in the above entitled cause, and adopt their assignment of errors as their statement of the points to be relied upon in this Court, and designate to be printed the whole of the record as filed, as necessary for the consideration of this cause.

Dated, September 17, 1948.

Marshall P. Madison, John M. Hall, Counsel for appellants.

[fol. 2961] Due service and receipt of a copy of the foregoing Statement of Points to be Relied Upon and Desig-

nation of the Parts of the Record to be Printed is hereby acknowledged this 21st day of September, 1948.

Philip B. Perlman, Solicitor General, for Appellee.

[fol. 2961a] [File endorsement omitted]

[fol. 2962] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 19, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: Enter Marshall P. Madison. File No. 52281, U. S. D. C., Southern California. Term No. 279. Standard Oil Company of California and Standard Stations, Inc., Appellants, vs. The United States of America. Filed September 16, 1948. Term No. 279 O. T. 1948.

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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 279

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC.,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

APPEAL FROM THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF CALIFORNIA

STATEMENT AS TO JURISDICTION

MARSHALL P. MADISON,

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

Civil Action No. 6159-Y

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC.,

Defendants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States, as amended, defendants submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the final judgment of the District Court entered in this cause on June 30, 1948. A petition for appeal is presented to the District Court herewith, to-wit, on July 20, 1948.

Jurisdiction

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, as

amended (32 Stat. 823; 36 Stat. 1167; 58 Stat. 272, 15 U. S. C. A. 29), and Section 238 of the Judicial Code, as amended (36 Stat. 1157; 38 Stat. 804; 43 Stat. 938, 28 U. S. C. A. 345).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this cause: *Interstate Circuit, Inc.* v. *United States*, 306 U. S. 208; *United States* v. *Crescent Amusement Co.*, 323 U. S. 173; *Associated Press* v. *United States*, 326 U. S. 1.

Statutes Involved

The pertinent provisions of Section 1 of the Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C. A. 1), commonly known as the Sherman Act, are as follows:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: . . ."

Section 3 of the Act of October 15, 1914, as amended (38 Stat. 731, 15 U. S. C. A. 14), commonly known as the Clayton Act, is as follows:

> "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to sub-

stantially lessen competition or tend to create a monopoly in any line of commerce."

The Issues and the Ruling

This is an equity suit brought by the United States of America in the Federal District Court for the Southern District of California, Central Division, charging that the two corporate defendants, Standard Oil Company of California (herein called "Standard"), and the latter's wholly owned subsidiary, Standard Stations, Inc., had violated Sec. 1 of the Sherman Act and Sec. 3 of the Clayton Act for at least fifteen years.

To support this charge plaintiff alleged the following: Defendants had entered into contracts and subleases with independent dealers[1] in gasoline and other petroleum products and tires, tubes, batteries and other automotive accessories in the States of California, Oregon, Washington, Arizona, Nevada, Idaho and Utah. These contracts and subleases obligated Standard to sell and the dealer to buy from Standard during a stated term all petroleum products, and, in certain cases, all petroleum products, tires, tubes and batteries, required by the dealer for resale at his service station or garage. This was said to unreasonably restrain, and to have the effect of substantially lessening competition and tending to create a monopoly in, the commerce in these products in such area.

The making of the contracts and subleases was not denied. Issue was joined by denial of plaintiff's charge that they unreasonably restrained commerce or had or might have the effect of substantially lessening competition or tending to create a monopoly in commerce. Defendants affirma-

[1] Standard in the area involved also operated a number of service stations through its own employees. Operations affecting these employee-operated service stations, known as "Standard Stations," are not complained of in this case.

tively alleged that contracts and subleases of this character had long been employed by defendants' competitors; that the practice had arisen and been pursued because dealers required over a definite period a supply of these products to satisfy their requirements; that defendants' contracts and subleases were the outgrowth of competition; that defendant's competitors in the area in question were numerous and aggressive; and that, but for these contracts and subleases, the competition of defendants for the trade of the dealers would have been eliminated.

The cause was tried in the District Court during May, 1948. Plaintiff introduced in evidence the contracts and subleases; showed that they affected 5197 dealers in Standard's products within the area in question; and introduced evidence which, it was contended, showed that the annual purchases by such dealers of Standard's products amounted to $68,000,000.00 and that Standard's retail dealer sales of gasoline were 12% to 14% of the total.

Much of defendants' evidence dealt with the competitive picture. Among other matters, defendants' uncontradicted evidence showed that in 1946 in the Los Angeles area (the largest retail gasoline market in the world) Standard's gasoline retail dealer sales were 2.43% of the total, and in the San Francisco area 5.52% of the total; that in 1946 in the seven Western states Standard's retail dealer sales of lubricating oil were 5% of the total; of tires, 2% of the total; and of batteries, 1.8% of the total; that Standard pursued a policy of contracting with the fewest possible number of dealer outlets consistent with its service of the marketing area; that such outlets were not so territorially concentrated as to even suggest a monopoly of any part of such area; that the number of Standard's dealer outlets had decreased substantially over a ten-year period; that Standard's dealer outlets represented only a small fraction of the total outlets; that the total number of retail outlets

for gasoline in the seven-state area was approximately 36,500 and many more than that number for tires, tubes and batteries; that Standard throughout the area had powerful, aggressive and numerous competitors,[2] a number of whom had dealers exclusively handling their products, and a number of whom had expanded their dealer sales to a far greater degree than Standard; that the six principal oil company competitors of Standard had more than 20,000 gasoline dealer outlets in the seven-state area, each one of which outlets handled exclusively the gasoline of a single company; that of the 36,500 retail outlets for gasoline in such area 98.4% handled exclusively the gasoline of a single supplier; that Standard's dealer sales had not increased in volume out of proportion to the general increase in volume enjoyed by the rest of the industry in the area in question and, in certain areas and in the case of certain products, had markedly fallen behind industry sales as a whole; that competitors of Standard had suffered no financial detriment from the practices complained of but, on the contrary, had grown and presumably prospered; and that both dealers and the motoring public had benefited substantially from the service maintained by Standard as a part of the marketing system of which the contracts and leases were an integral part.

On June 7, 1948, the District Judge filed his opinion, a copy of which is annexed, announcing a decision in favor of plaintiff. Therein he called attention to the number of outlets under Standard's contracts and subleases and to the volume of business done by these outlets, and concluded that, irrespective of competitive conditions, the market as a

[2] In the seven-state area there were 80 competitor companies each of which marketed over 1,000,000 gallons of gasoline annually; there were 69 competitor companies marketing their own brands of lubricating oil; and competitor companies distributing gasoline promoted through retail outlets handling their products 27 different lines of tires and 28 different lines of batteries, all competitive with Standard's products.

whole, and Standard's competitive position, this was enough to warrant an injunction. Thus he said:

> ". . . *As the restriction corners a market of the value of $68,000,000.00, it is illegal, even considered on a comparative basis.* Concede further, that the arrangement was entered into in good faith, with the honest belief that control of distribution and consequent concentration of representation were economically beneficial to the industry and to the public, that they have continued for over fifteen years openly, notoriously and unmolested by the Government, and have been practiced by other major oil companies competing with Standard, that the number of Standard outlets so controlled may have decreased, and the quantity of products supplied to them may have declined, on a comparative basis. *Nevertheless, as I read the latest cases of the Supreme Court, I am compelled to find the practices here involved to be violative of both statutes. For they affect injuriously a sizeable part of interstate commerce, or,—to use the current phrase,—'an appreciable segment' of interstate commerce.*"

Deeming this contrary to *United States* v. *Columbia Steel Co.*, — U. S. —,[3] decided the same day, defendants promptly moved to reopen the case and for further argument, reconsideration and a revision of the opinion and for findings and judgment in favor of defendants. This motion was denied on June 28, 1948. On the same day, the trial Judge filed a second or "supplemental opinion," a copy of which is annexed.

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[3] Therein it was said:

"In determining what constitutes unreasonable restraint, we do not think the dollar volume is in itself of compelling significance; we look rather to the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market."

Findings of fact and conclusions of law herein were filed on June 30, 1948, and a final judgment herein in favor of plaintiff was entered on June 30, 1948.

The findings of fact ignore the competitive setting disclosed by defendants' uncontradicted evidence, *i.e.*, the number, growth, strength, operations and practices of defendants' competitors, the character and extent of the market, and Standard's position in the competitive picture.

The Questions Are Substantial

The District Court was of the view that the anti-trust laws were violated solely upon a showing that the contracts between Standard and its customers excluded competitors from supplying the requirements of such customers.

Yet every contract for a future supply excludes competitors from supplying the buyer's requirements of the products contracted for by such contract. Are all supply contracts to be declared illegal under the anti-trust laws provided they embrace a sizeable quantity? This is the effect of the District Court's decision. The repercussions of such doctrine would be immeasurably disastrous.

The District Court declared that the contracts were not unlawful *per se;* that they became unlawful only because of their effect. Nevertheless, in assessing their effect, the District Court disregarded the entire competitive picture, *relying solely upon the number of such contracts and the volume of goods sold thereunder.* It was said to be enough that this "appreciable segment" of commerce (*i.e.*, Standard's dealers) was affected, *irrespective of conditions in the market generally and Standard's competitive position.* Despite a large amount of evidence showing such conditions and Standard's competitive position, findings relating thereto were not made, doubtless because of the District Court's belief that this made no difference. Defendants' good faith, economic benefit to the public as against detri-

ment to ensue from an abolition of this system of distribution,[4] and a total lack of any specific purpose or intent on the part of defendants to restrain competition or monopolize, were likewise regarded as inconsequential.

The District Court's decision extends the rule of *United States* v. *Yellow Cab Co.*, 332 U. S. 218, to facts bearing no resemblance to the facts underlying the *Yellow Cab* case, and disregards the pronouncement of the Supreme Court in *United States* v. *Columbia Steel Co.* (June 7, 1948) that the holding in the *Yellow Cab* case did not make illegal the acquisition of an outlet "without consideration of its effect on the opportunities of other competitor producers to market their" products.

If the District Court's decision were to govern:

(A) Doubt would arise concerning the legality under the anti-trust laws of many large supply contracts and supply contracts with a large number of purchasers in many lines of industry and commerce throughout the nation, *irrespective of the competitive conditions involved.*

(B) There would be conflict with the rule that where the contract attacked is not illegal *per se* and no specific intent to violate the anti-trust laws has been shown, *competition must be shown to have been lessened "to such a degree as will injuriously affect the public." International Shoe Co.* v. *Federal Trade Comm.*, 280 U. S. 291, 297, 298.

(C) There would be conflict with the rule that in a case of this character *the trial court must "look . . . . to the percentage of business controlled, the strength of the re-*

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[4] At the trial the court announced that it would not "allow any testimony regarding the effect of this arrangement on prices"; that "the unreasonableness of the restraint under the Sherman Act and the substantiality of the restriction under the Clayton Act are not affected by the price at which the product is sold to the public"; and that it would not allow testimony as to the "economic merits or demerits of the present system as contrasted with a system which prevailed prior to its establishment."

maining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market." *United States* v. *Columbia Steel Co.*, — U. S. — (June 7, 1948).

It is respectfully submitted that the Supreme Court has jurisdiction upon direct appeal, and that the questions presented are substantial.

Dated: July 20, 1948.

MARSHALL P. MADISON,
JOHN M. HALL,
Attorneys for Defendants.

(Italics in the foregoing have been added.)

APPENDIX A

IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

No. 6159-Y Civil

UNITED STATES OF AMERICA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, AND STANDARD STATIONS, INC., Defendants

Opinion

APPEARANCES:

For the Plaintiff: William C. Dixon, Special Assistant to the Attorney General, W. Alan Thody, Special Assistant to the Attorney General, Lawrence W. Somerville, Special Attorney Anti-Trust Division, Theodore Driscoll, Special Attorney Anti-Trust Division, Tom C. Clark, Attorney General, James M. Carter, United States Attorney.

For the Defendants: Lawler, Felix & Hall, By, John M. Hall, Pillsbury, Madison & Sutro, By Everett A. Mathews.

By this suit in equity, the Government seeks a decree adjudging that certain practices engaged in by the defendants and certain contracts entered into by them, unreasonably restrain interstate trade and commerce in violation of Section 1 of the Sherman Anti Trust Act (1), and substantially lessen competition and tend to create a monopoly in a line of commerce, in violation of Section 3 of the Clayton Act. (2) The Government asks us to declare the exclusive supply provisions in the contracts and the practices flowing from them to be void and of no effect.

In addition, we are asked to enjoin the defendants, in perpetuity, from entering into or enforcing any contract, agreement, or understanding, express or implied, with any independent service station operator or garage operator,

[1] 15 U.S.C.A., Sec. 1.
[2] 15 U.S.C.A., Sec. 14.

or from inducing or compelling, or attempting to induce or compel, any such person from entering into any contract, agreement or understanding, which has any of the following requirements:

(a) That the Independent Service Station Operator or Garage Operator shall secure all his requirements of petroleum products from defendant Standard, or shall not handle the petroleum products of any other company;

(b) That the Independent Service Station Operator, or Garage Operator shall secure all his requirements of any one or more types of automobile accessories from or through defendants Standard and Standard Stations, Inc., or will not handle accessories competitive with those distributed or sponsored by defendants, Standard and Standard Stations, Inc.

(c) That the sale of any petroleum product or automotive accessories to any Independent Service Station Operator, or Garage Operator shall be conditional on the sale of other petroleum products or automotive accessories.

The action was instituted on January 2, 1947. Many proceedings have taken place before the trial and an extensive file has been built up. However, as a case of this character must be determined on the basis of facts existing at the time of the trial, it is not necessary to give a detailed analysis of the pleadings in the case or the proceedings before the court.

What precedes is sufficient for the purpose of the discussion to follow.

YANKWICH, *District Judge:*

I

The Proved Facts

Notwithstanding the lengthy trial and the large number of exhibits introduced, the issues in the case are rather narrow, as will appear further on in the opinion when we expound the legal principles which control the case.

There is, therefore, no need to review elaborately the facts proved. A brief summary will suffice.

The defendant Standard Oil Company of California is a Delaware corporation with its principal place of business at San Francisco, California. It is engaged in the business of producing, transporting, refining and marketing petroleum and petroleum products, principally, in the states of California, Oregon, Washington, Arizona, Nevada, New Mexico, Idaho and Utah.

The defendant Standard Stations, Incorporated, is a corporation organized under the laws of Delaware with its principal place of business at San Francisco. It is a wholly-owned subsidiary of Standard Oil Company of California, and is engaged in the business of managing service stations in the seven states just mentioned. The number of these stations is 1063.

As the issues have narrowed themselves by the proof, no further reference need be made to these stations so operated which have been referred to in the evidence as "employe operated stations." The Government does not question (indeed, it could not) the right of the Standard Oil Company of California to operate its own stations and sell therein any product it manufactures or distributes. Hence when we refer to "Standard" in what follows, it will be understood that the reference is to Standard Oil Company of California, the parent company, actually engaged in what, for brevity, we shall call "the oil business".

The evidence in the cases shows that, as of March 12, 1947, Standard, in addition to the company operated service stations, had contractual arrangements with 7145 stations in the area. The relationship of Standard to these stations was governed by the five types of agreements entered into with the operators of the stations. They were:

(1) "Dealer Agreements," of which there were 1656, containing the following clause:

"1. Standard Oil Company of California, a corporation hereinafter called 'Company' agrees to sell to —— hereinafter called 'Dealer,' and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products

used or sold or bought to be used or sold by Dealer at ——. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity."

(2) "Distributor Agreements," of which there were 556, containing the following:

"Company agrees to sell to Distributor, and Distributor agrees to buy from Company and stock and offer for sale all of Distributor's requirements of petroleum products used or sold or bought to be used or sold by Distributor in the conduct of his business on the premises hereinafter described. The petroleum products to meet Distributor's requirements hereunder shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by Standard Stations, Inc. in Distributor's vicinity, and Distributor agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station."

(3) "Petroleum Products and Equipment Agreements", of which there were 912, containing this clause:

"1. Standard Oil Company of California, a corporation, hereinafter called 'Company', agrees to sell to —— hereinafter called 'Dealer', and Dealer agrees to buy from Company, all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at ——. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by Company to its dealers generally in Dealer's vicinity."

(4) "Dealer Agreement TBA", of which there were 2221, having this clause:

"1. Standard Oil Company of California, hereinafter called 'Company', agrees to sell to —— hereinafter called 'Dealer', and Dealer agrees to buy from Company, all Dealer's requirements of petroleum products used, sold, or bought to be used or sold, by Dealer at ——, hereinafter called 'said premises.' The petroleum products to meet

Dealer's requirements hereunder shall be those brands of such products generally sold by Company to its Dealers."

(5) "Sublease Agreements", of which there were 1800, containing the following clause:

"Lessee shall handle and sell on the leased premises only such petroleum products as are sold Lessee by Lessor, and Lessee agrees not to store, handle, sell, or distribute on or from said premises any petroleum products of any description other than those petroleum products sold to Lessee by Lessor. The price payable by Lessee to Lessor for said petroleum products shall be Lessor's posted price for the same or similar products to its Dealers generally in Lessee's vicinity at time and place of delivery."

The choice of the type of agreement was the dealer's. And the agreements were terminable by him on six months' notice. Each of these agreements contained provisions which, both by the language used and the limitations of liability, stressed the character of the agreement as seeking to establish the dealer as an independent contractor. Dealer Agreements (Class I) contained the most elaborate provisions. They are here given in full:

"6. Dealer acknowledges that he has thoroughly inspected the pumps, tankage, containers, pipes, and other facilities on the premises and that the same are in good condition, and while this agreement is in force Dealer agrees to so keep the same at Dealer's own cost and expense; provided, however, that Company may, at its discretion, maintain and repair said facilities. Dealer further agrees to protect, defend, and hold harmless the Company against all claims for damage to property (including Dealer's property), or injury to or death of persons, directly or indirectly resulting from any acts or omissions of Dealer or Dealer's employees in or about said premises, either in the maintenance or operation of the tanks, containers, pipes, pumps and other facilities thereon, or in the vending therefrom of the products and goods handled by Dealer hereunder.

"7. In the performance of this agreement Dealer is engaged in an independent business and nothing contained shall be construed as reserving to Company any right to

control Dealer with respect to his conduct in the performance of this agreement. Company reserves no right to exercise any control over any of Dealer's employees and all employees of the Dealer shall be entirely under the control and direction of Dealer who shall be responsible for their actions and omissions. Dealer will, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in said state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Company with satisfactory evidence of the maintenance of such insurance. Dealer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws as to all persons employed by and working for him in connection with the performance of this agreement.

"8. Any tax, or the amount thereof, now or hereafter imposed, levied, or assessed by any governmental authority upon, measured by, incident to, or as the result of the transaction herein provided for, or the transportation, production, or manufacture of the goods, the subject matter of this agreement, shall, if collectible or payable by the Company, be paid by the Dealer on demand by the Company, as tax collectible or as an increase in the prices otherwise herein provided for."

The other types of agreement aimed to achieve the same result.

The history of the use of the various types of agreement shows that, beginning in 1938, the dealer agreements begun to supersede the authorized distributor agreements which had obtained before that date, and that, beginning with the year 1944, Type 4 (TBA) came into almost exclusive use. There is duplication of agreements in that a single station may operate under several types of agreements. Hence the actual number of gas station outlets is 5197. The number of stations operating under Form 2 has since been reduced to 232. In addition to this, Standard had 742 open accounts and 1063 company-operated stations, or, as they have been called in this case, employee-operated stations.

The evidence in the record shows beyond cavil that the effect of these agreements was to limit the dealer operating under any of them to the handling of petroleum products of Standard and also to the marketing of tires, tubes, batteries and accessories controlled or handled by Standard. If they handled others, they did not do so openly. The agreements were so interpreted by those operating under them,—as various operators from various states testified. Indeed, witnesses of the defendant very forthrightly stated that the operators were expected to confine themselves to Standard products and accessories, the exception being only those rare cases—especially during the War—when they were unable to supply the quantity asked, in which event, the supervising employees of Standard would "shut their eyes" to the infractions.

The record also shows that, as to tires, tubes, batteries and accessories, Standard reserved the right to determine the amounts it would furnish. As to the other accessories, —which included spark plugs, sun visors, fan belts, hub caps, and all small parts of automobiles, which can easily be replaced at a service station—the requirement was up to the dealer himself. Tires, tubes and batteries were not, as a rule, sold to operators of stations other than those under contract with Standard,—especially during the time of shortage. Its petroleum products and accessories were sold to other station operators, particularly after the war scarcity ended. The representatives of other companies manufacturing petroleum products, tires, tubes, batteries and other accessories, testified that they could not sell their products to stations under contract with Standard, except in rare instances, and that, surreptitiously. When a station was converted into a Standard station, whatever custom in non-Standard products they had before ceased. To maintain the goodwill of the operators of the stations, Standard assisted them financially, made loans which were later discounted, furnished many valuable services, and expended large sums of money in advertising, in educating the operators in the manner of handling the products, in building the stations, adding facilities to them, repairing and improving them,—all of which meant large expenditures of

money. As a result, Standard has a sixteen and one-half million dollar capital investment in the dealer stations.

When salesmen or supervisors of Standard found competitive products, they "urged",—as they testified—or, as the operators testified, showed their displeasure, and, practically "ordered" their discontinuance or substitution. Many of the competitive products so offered for sale and shut out of the stations under contract with Standard were produced outside of the States in which the stations were located, or were shipped in interstate commerce.

So there cannot be any question that, at least so far as these products are concerned, the practice of which the Government complains, affected the flow of goods and products in interstate commerce. (3) The character of the result and its legality, as well as the legality of the restrictive clauses themselves are questions of law.

To them we now direct our attention.

II

The Law Today

(A) *Exclusive Supply Provisions:*

The case does not require an extended review of the principles which courts have evolved in interpreting the Sherman Anti-Trust and Clayton Acts. I have had occasion to discuss the scope and nature of anti-trust legislation and its application both to activities which are local and to those which transcend state limits, in several opinions. (3)

There is another reason for confining ourselves to the more recent decisions of the Supreme Court: They have modified, to a great extent, some of the legal norms declared in prior cases. (4) And the problem in this case can be nar-

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[3] *Walling* v. *Jacksonville Paper Co.*, 1943, 317 U. S. 564; *United States* v. *South-Eastern Underwriters Association*, 1944, 322 U. S. 546-553; *United States* v. *Frankfort Distilleries, Inc.*, 1945, 324 U. S. 293, 296-298; *United States* v. *Yellow Cab Co.*, 1947, 332 U. S. 218, 224-226.

[4] *United States* v. *Heating & Piping & Air Conditioning Contractors Assn.*, 1940, D. C. Calif., 38 Fed. Sup. 978; *United States* v. *Food & Grocery Bureau of So. Calif.*, 1942, D. C. Calif., 43 Fed. Sup. 966; *United States* v. *Food & Grocery Bureau of So. Calif.*, 1942, D. C. Calif., 43 Fed. Sup. 974; *United States* v. *San Francisco Electrical Contractors Assn.*, 1944, D. C. Calif., 57 Fed. Sup. 57.

rowed down to two rather simple inquiries. They are: (a) Are agreements of the type involved in this case,—as summarized briefly in the preceding portion of the opinion—violative of either or both the statutes. Which, in reality, comes down to this: Is an agreement by an oil company, engaged in the production and distribution of petroleum products, and the sponsoring and distribution of automobile parts and accessories, which obligates a gasoline station operator to supply his full requirements of petroleum products, tires, tubes, batteries, and other accessories, from the company, *of itself*, a violation of either of the Acts? If the answer to this question is in the affirmative, the inquiry is at an end. (b) If in the negative, we must determine whether the effect of the agreement as a restraint on commerce makes it invalid under either or both Acts.

Seeking an answer to these inquiries, I begin with the assumption that the General Motors exclusive supply case (5) is still the law. Which means that, at least under the Clayton Act, an agreement by a dealer, in consideration of being permitted to deal in a certain product, that he will not sell or offer to sell any products not manufactured or handled by the particular manufacturer, is not *per se* illegal. The opinion in the General Motors case states the question involved tersely. The Court had before it an agreement which not only indirectly forbade the handling of the products of other manufacturers, but *prohibited* specifically their use or sale in these words:

> "'Dealer agrees that he will not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and chassis second-hand parts or used parts or any parts not manufactured by the Chevrolet Motor Company . . .'" (6)

This eliminated not only parts not manufactured by them, but also second-hand and used parts. A complete monopoly was achieved. At the same time, the dealer was not granted exclusive selling rights in new parts and accessories. General Motors was, therefore, free to grant to other dealers

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[5] *Pick Manufacturing Co.* v. *General Motors Corp.*, 1936, 299 U. S. 3.

[6] *Pick Manufacturing Co.* v. *General Motors Corp.*, *supra*, at pp. 3-4.

in the same territory the same rights. The trial court dismissed the bill for want of equity. Affirming the decree, the Supreme Court said:

> "Upon the evidence adduced at the trial the District Court found that *the effect of the clause had not been in any way substantially to lessen competition or to create a monopoly in any line of commerce.*" (7)

I take this language to mean that, even when we are confronted with a contract which shuts out competition, we must, under the Clayton Act, determine its effect on the line of commerce.

Under the Sherman Act, the reasonableness or unreasonableness of the restraint is,—since the first Standard Oil decision in 1911,—an element to be considered. (8) *Both are questions of fact, the solution of which rests upon the conditions obtaining in each particular case.*

The Socony-Vacuum case (9) and other cases which followed it express the view that the economic wisdom or unwisdom, or the economic benefit or detriment, of a restriction on commerce is not material, especially when we are dealing with a practice, such as price-fixing, which is illegal *per se*. But, at the same time, economic effect becomes material if we are dealing with a restraint other than price-fixing, a restraint which is monopolistic. Because, when this is the situation, it must appear that there is substantial lessening of competition or monopoly under the Clayton Act, before we can place a judicial interdict on it. We find this language in the Socony-Vacuum case:

> "Secondly, the fact that sales on the spot markets were still governed by some competition is of no consequence. *For it is indisputable that that competition was restricted through the removal by respondents of a part of the supply which but for the buying program*

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[7] *Pick Manufacturing Co.* v. *General Motors Corp.*, *supra*, at p. 4 (Emphasis added).

[8] *Standard Oil Co.* v. *United States*, 1911, 221 U. S. 5, 55-62.

[9] *United States* v. *Socony-Vacuum Oil Co.*, 1940, 310 U. S. 150, 220-225; See, *Fashion Originators' Guild* v. *Federal Trade Commission*, 1941, 213 U. S. 457, 468.

would have been a factor in determining the going prices on those markets. But the vice of the conspiracy was not merely the restriction of supply of gasoline by removal of a surplus. As we have said, this was a well-organized program. The timing and strategic placement of the buying orders for distress gasoline played an important and significant role. Buying orders were carefully placed so as to remove the distress gasoline from weak hands. Purchases were timed. Sellers were assigned to the buyers so that regular outlets for distress gasoline would be available. The whole scheme was carefully planned and executed to the end that the distress gasoline would not overhand the markets and depress them at any time. And as a result of the payment of fair going market prices a floor was placed and kept under the spot markets. Prices rose and jobbers and consumers in the midwestern area paid more for their gasoline than they would have paid but for the conspiracy.

"Competition was not eliminated from the markets; but it was clearly curtailed, since restriction of the supply of gasoline, the timing and placement of the purchases under the buying programs and the placing of a floor under the spot markets obviously reduced the play of the forces of supply and demand.

"The elimination of so-called competitive evils is of no legal justification for such buying programs. The elimination of such conditions was sought primarily for its effect on the price structures. Fairer competitive prices, it is claimed resulted when distress gasoline was removed from the market. But such defense is typical of the protestations usually made in price-fixing cases. Ruinous competition, financial disaster, evils of price-cutting and the like, appear throughout our history as ostensible justifications for price-fixing. If the so-called competitive abuses were to be appraised here, the reasonableness of prices would necessarily become an issue in every price-fixing case. In that event, the Sherman Act would soon be emasculated; its philosophy would be supplanted by one which is

wholly alien to a system of free competition; it would not be the charter of freedom which its framers intended." (10)

(B) Effect of Restriction.

What Mr. Justice Douglas says applies with greater force to a restrictive practice other than price-fixing. The fact that it may be beneficial is not material, if, in effect, it is an unreasonable restraint. (11)

Judge Learned Hand stressed these very points in the Fashion Originators' Guild case. (12) He applied the reasoning of the *Socony-Vacuum* case to a case not involving price-fixing. And, with that clarity of language so characteristic of his writing, he showed that economic benefits cannot be taken into consideration if, in fact, there be substantial restriction of commerce. The opinion says:

> " . . . Many trade combinations which affect competition are lawful, when they are designed to prevent trade 'abuses'; they are 'reasonable' though perhaps to say so is no more than to state the problem. Appalachian Coals, Inc. *v.* United States, 288 U. S. 344, 374, 53 S. Ct. 411, 77 L. Ed. 825; Sugar Institute *v.* United States, 297 U. S. 553, 598, 56 S. Ct. 629, 80 L. Ed. 859. Certainly it is not true that the lawfulness of every combination depends upon whether it 'reasonably' corrects trade 'abuses'; there are some combinations that nothing will excuse. The accepted rubric for this is that when the means are unlawful per se, the purposes of the confederates will not justify them. Sugar Institute *v.* United States, supra, 297 U. S. 553, page 599, 56 S. Ct. 629, 80 L. Ed. 859. *The most recent example of this is the Supreme Court's reaffirmation of the unconditional illegality of price-fixing in spite*

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10 *United States* v. *Socony-Vacuum Oil Co., supra,* at pp. 220-221 (Emphasis added.)

11 See, *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 1948, slip decision No. 75, decided on May 10, 1943, pp. 22 *et seq.*

12 *Fashion Originators' Guild* v. *Federal Trade Commission*, 1940, 2 Cir., 114 F. (2) 80.

of the probability that the combination in fact benefited the industry. *United States* v. *Socony-Vacuum Oil Co.*, 210 U. S. 150, 60 S. Ct. 811, 84 L. Ed. 1129. However grave the industrial disorders, that remedy was not permissible; the industry may restore itself by many devices, but not by all. * * * Price-fixing is not, however, the only means unlawful per se. *The interest of the consumer is not all that determines the 'reasonableness' of a contract 'in restraint of trade'. It is also unlawful to exclude from the market any of those who supply it—assuming that there is no independent reason by virtue of their conduct to justify their exclusion—and it is no excuse for doing so that their exclusion will result in benefits to consumers, or to the producers who remain.* W. W. Montague & Co. *v.* Lowry, 193 U. S. 38, 47, 24 S. Ct. 307; 48 L. Ed. 608; Eastern States Retail Lumber Dealers Association *v.* United States, 234 U. S. 600, 611, 34 S. Ct. 951, 58 L. Ed. 1490, L.R.A. 1915A, 788; Binderup *v.* Pathe Exchange, 263 U. S. 291, 311, 312, 44 S. Ct. 96, 68 L. Ed. 308; Anderson *v.* Shipowners Association, 272 U. S. 359, 363, 47 S. Ct. 125, 71 L. Ed. 298; Bedford Cut Stone Co. *v.* Journeymen Stone Cutter's Association, 274 U. S. 37, 54, 47 S. Ct. 522, 71 L. Ed. 916, 54 A.L.R. 791; Paramount Famous Corp. *v.* United States, 282 U. S. 30, 43, 44, 51 S. Ct. 42, 75 L. Ed. 145; United States *v.* First National Pictures, Inc., 282 U. S. 44, 54, 51 S. Ct. 45, 75 L. Ed. 151; National Harness Association *v.* Federal Tr. Comm. 6 Cir., 276 F. 705, 712; Wholesale Grocers Ass'n *v.* Federal Tr. Comm. 5 Cir., 277 F. 657, 663; Butterick Publishing Co. *v.* Federal Tr. Comm. 2 Cir., 85 F.(2d) 522. There is another reason supporting this conclusion. A successful combination among a part of the producers to exclude others, even when not accompanied by an agreement fixing prices, puts into their hands collectively the power to control the supply and with it the price. The fact that the power is not at the moment exercised is of no assurance that it may not be; if the effort succeeds and the combination is not disrupted, it may at any time be used, and there will then be no protection to the consumer.

"*Finally, it is of no consequence that the Guild does not supply the whole market for women's dresses; it aims at a monopoly however small its share of total sales.* The reason is as follows: Although all dresses made after one design are fungibles, the different designs themselves are not fungibles. Each has its own attraction for buyers; each is unique, however trifling the basis for preferring it may be. Hence to attempt to gather to oneself all possible reproductions of a given design is to attempt to create a monopoly, as at once appears from the fact that a copyright for it—and a fortiori a design patent upon it—would be ranked as a monopoly. It is true that the sanction of that monopoly may be very weak; it depends upon the design's attractions above other designs, often not a very important margin of advantage. But the same is true of nearly all monopolies, for there are substitutes for most goods. As to each design therefor the Guild is seeking to establish a monopoly; and *it is unimportant whether its gross sales are large or small, as compared with those of all women's dresses. For these reasons, the combination was unlawful per se;* the commission was right in refusing to hear any evidence in its excuse, for it could have no excuse; the case is the same as Millinery Creators' Guild *v.* Federal Trade Commission, *supra*, 2 Cir., 109 F. (2d) 175" (13).

The teaching of these cases is this: When we are dealing with price-fixing, we are dealing with a contract which is invalid *per se* and violative of the Act. However, when we consider any other restrictions, their legality must be determined *by the nature of the contract in relation to the line of commerce which it may affect.* A contract by a manufacturer of a product which binds an agent who is used as an outlet to the exclusive use of his product *is not necessarily* a violation of either the Sherman Act or the Clayton Act. But it *may be* so under the Sherman Act, if it results in an unreasonable restraint of trade, and under

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13 *Fashion Originators' Guild* v. *Federal Trade Commission, supra*, at pp. 84-85 (Emphasis added).

the Clayton Act, if it results in a monopoly in a line of commerce or lessens competition substantially. (14)

The more recent decisions of the Supreme Court reaffirm these principles. (15) To quote from *Federal Trade Commission* v. *Morton Salt Company* (16):

> "The statute requires no more than that the effect of the prohibited price discriminations 'may be substantially to lessen competition . . . or to injure, destroy or prevent competition.' After a careful consideration of this provision of the Robinson-Patman Act, we have said that 'the statute does not require that the discrimination must in fact have harmed competition, but only that there is a reasonable possibility that they "may" have such an effect.' Corn Products Co. *v.* Federal Trade Comm'n., 324 U. S. 726, 742. Hence the Commission found what would appear to be obvious, that the competitive opportunities of certain merchants were injured when they had to pay respondent substantially more for their goods than their competitors had to pay. The findings are adequate.
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> "Fourth. It is urged that the evidence is inadequate to support the Commission's findings of injury to competition. As we have pointed out, however, the

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[14] See cases under Notes 8 to 12, inclusive. And see, Restatement of Contracts, Section 516; *Wilder Mfg. Co.* v. *Corn Products Refining Co.*, 1915, 236 U. S. 165; *Federal Trade Commission* v. *Sinclair Refining Co.*, 1923, 261 U. S. 463; *Twin City Co.* v. *Harding Glass Co.*, 1931, 283 U. S. 353; *Associated Oil Co.* v. *Myers*, 1933, 217 Cal. 297; *General Petroleum Corp.* v. *Longhead*, 1933, 218 Cal. 554; *B. S. Pearsall Butter Co.* v. *Federal Trade Commission*, 1933, 7 Cir., 292 Fed. 720; *Excelsior Motor Mfg. & Supply Co.* v. *Sound Equipment*, 1934, 7 Cir., 73 F. (2) 725.

[15] *United States* v. *Yellow Cab Co.*, 1947, 332 U. S. 218; *United States* v. *National Lead Co.*, 1947, 332 U. S. 319; *International Salt Co., Inc.* v. *United States*, 1947, 332 U. S. 392; *United States* v. *National Lead Co.*, 1947, 332 U. S. 319; *United States* v. *Line Material Co.*, 1947, 333 U. S. 287, 308-310; *United States* v. *United States Gypsum Co.*, 1948, 333 U. S. 364, 388-393. And see, *International Machines Corp.* v. *United States*, 1936, 298 U. S. 130, 137-140; *Oxford Varnish Corp.* v. *Ault & Wiborg Corp.*, 1936, 6 Cir., 83 F. (2) 764; *Signode Steel Strapping Co.* v. *Federal Trade Commission*, 1942, 4 Cir., 132 F. (2) 48, 52-54.

[16] *Federal Trade Commission* v. *Morton Salt Company*, 1948, slip decision, No. 464, pp. 7-8.

Commission is authorized by the Act to bar discriminatory prices upon the 'reasonable possibility' that different prices for like goods to competing purchasers may have the defined effect on competition. That respondent's quantity discounts did result in price differentials between competing purchasers sufficient to influence their resale price of salt was shown by evidence.''

The following quotation from the American Crystal Sugar case is also enlightening:

"The statute does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers. Nor does it immunize the outlawed acts because they are done by any of these. Cf. United States *v.* Socony-Vacuum Oil Co., 310 U. S. 150; American Tobacco Co. *v.* United States, 328 U. S. 781. The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated. Cf. United States *v.* South-Eastern Underwriters Assn. *supra,* at 553.

"Nor is the amount of the nation's sugar industry which the California refiners control relevant, *so long as control is exercised effectively in the area concerned.* Indiana Farmer's Guide *v.* Prairie Farmer, 293 U. S. 268, 279, United States *v.* Yellow Cab Co., 332 U. S. 218, 225, *the conspiracy being shown to affect interstate commerce adversely to Congress' policy.* Congress' power to keep the interstate market free of goods produced under conditions inimical to the general welfare, United States *v.* Darby, 312 U. S. 100, 115, may be exercised in individual cases without showing any specific effect upon interstate commerce, United States *v.* Walsh, 331 U. S. 432, 437-438; it is enough that the individual activity when multiplied into a general practice is subject to federal control, Wickard *v.* Filburn, *supra,* or *that it contains a threat to the interstate economy that requires preventive* regulation." (17).

(C) *The Meaning of "Unreasonable" and "Substantial".*

What precedes calls for a further inquiry into what is or what is not unreasonable restraint and what is or what is not a substantial lessening of competition.

The words "reasonable" or "unreasonable" do not occur in the Sherman Anti-Trust Act. (17) They were read into the Act by the decisions of the Supreme Court. (18)

The phrases which forbid practices which result in substantial lessening of competition or monopoly occur in the Clayton Act. (19)

All these terms have a pragmatic content. The Courts, in applying them, have sought to evolve concrete criteria by which the effect of a particular practice on competition should be gauged. Their scope and limit was stated by the Court in *Fashion Originators' Guild of America* v. *Federal Trade Commission*:

> "If the purpose and practice of the combination of garment manufacturers and their affiliates runs counter to the public policy declared in the Sherman and Clayton Acts, the Federal Trade Commission has the power to suppress it as an unfair method of competition. From its findings, the Commission concluded that the petitioners, 'pursuant to understandings, arrangements, agreements, combinations and conspiracies entered into jointly and severally' had prevented sales in interstate commerce, had 'substantially lessened, hindered and suppressed' competition, and had tended 'to create in themselves a monopoly'. And paragraph 3 of the Clayton Act (15 U.S.C.A. Sec. 14) declares 'It shall be unlawful for any person engaged in commerce, . . . to . . . make a sale or contract for sale of goods, . . . on the condition, agreement, or understanding that the . . . purchaser thereof shall not use or deal in the goods, . . . of a competitor or competitors of the . . . seller, where the effect of such . . . sale, or contract for sale

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[17] *Mandeville Island Farms, Inc. et al.* v. *American Crystal Sugar Company*, 1948, slip decision No. 75, p. 16.

[18] *Standard Oil Co.* v. *United States*, 1911, 221 U. S. 5, 55-62.

[19] 15 U.S.C.A., Sec. 14.

. . . may be to substantially lessen competition or tend to create a monopoly in any line of commerce.' The relevance of this section of the Clayton Act to petitioners' scheme is shown by the fact that the scheme is bottomed upon a system of sale under which (1) textiles shall be sold to garment manufacturers only upon the condition and understanding that *the buyers will not use or deal in textiles which are copies from the designs of textile manufacturing Guild members;* (2) *garment manufacturers shall sell to retailers only upon the condition and understanding that the retailers shall not use or deal in such copied designs.* And the Federal Trade Commission concluded in the language of the Clayton Act that these understandings substantially lessened competition and tended to create a monopoly. We hold that the Commission, upon adequate and unchallenged findings, correctly concluded that this practice constituted an unfair method of competition.

"Not only does the plan in the respects above discussed thus conflict with the principles of the Clayton Act; the findings of the Commission bring petitioners' combination in its entirety well within the inhibition of the policies declared by the Sherman Act itself. Section 1 of that Act makes illegal every contract, combination or conspiracy in restraint of trade or commerce among the several states; Sec. 2 makes illegal every combination or conspiracy which monopolizes or attempts to monopolize any part of that trade or commerce. Under the Sherman Act 'competition not combination should be the law of trade.' National Cotton Oil Co. *v.* Texas, 197 U. S. 115, 129. And among the many respects in which the Guild's plan runs contrary to the policy of the Sherman Act are these: *it narrows the outlets to which garment and textile manufacturers can sell and the sources from retailers can buy.* (Montague & Co. *v.* Lowry, 193 U. S. 38, 45; Standard Sanitary Mfg. Co. *v.* United States, 226 U. S. 20, 48-49); subjects all retailers and manufacturers who decline to comply with the Guild's program to an

organized boycott (Eastern States Retail Lumber Dealers' Assn. *v.* United States, 234 U. S. 600, 609-611); takes away the freedom of action of members by requiring each to reveal to the Guild the intimate details of their individual affairs (United States *v.* American Linseed Oil Co., 262 U. S. 371, 389); *and has both as its necessary tendency and as its purpose and effect the direct suppression of competition from the sale of unregistered textiles and copied designs* (United States *v.* American Linseed Oil Co., *supra*, at 389). In addition to all this, the combination is in reality an extra-governmental agency, which prescribed rules for the regulation and restraint of interstate commerce, and provides extra-judicial tribunals for determination and punishment of violations, and thus 'trenches upon the power of the national legislature and violates the statute.' (Addyston Pipe & Steel Co. *v.* United States, 175 U. S. 211, 242).

"Nor is it determinative in considering the policy of the Sherman Act that petitioners may not yet have achieved a complete monopoly. For '*it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition.*' (United States *v.* E. C. Knight Co., 156 U. S. 1, 16; Addyston Pipe & Steel Co. *v.* United States, 175 U. S. 211, 237.)" (20)

The approach to the problem has changed, as later cases indicate, (21) but the test of reasonableness is the same which the court laid down in the first case (22). As there stated, while the Act defines the boundaries which could not be transgressed, it leaves the application of the standard laid down

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[20] *Fashion Originators' Guild of America* v. *Federal Trade Commission*, 1941, 312 U. S. 457, 463-466 (Emphasis added); And see, *Eastern States Retail Lumber Dealers' Assn.* v. *United States*, 1914, 234 U. S. 600; *Standard Fashion Co.* v. *Magrane-Houston Co.*, 1922, 258 U. S. 346, 357; *Apex Hosiery Co.* v. *Leader*, 1940, 310 U. S. 469, 489-497.

[21] *Federal Trade Commission* v. *Morton Salt Co.*, *supra*; *Mandeville Island Farms Co.* v. *American Crystal Sugar Co.*, *supra*.

[22] *Standard Oil Co.* v. *United States*, 1911, 221 U. S. 5.

"to be determined by the light of reason, guided by the principles of law and the duty to apply and enforce the public policy embodied in the statute, in every given case whether any particular act or contract was within the contemplation of the statute." (23)

And the test under the Clayton Act is equally practical. The validity or invalidity of a contract or practice is determined by a consideration of the methods of restraint which the particular contract or practice impose and the effect which they may have. (24) The more recent cases interpret the language of the statute to include not only probable effects but also possible effects. (25)

In summary, when we are asked to determine unreasonableness of restraint under the Sherman Act, or substantially in lessening competition or tendency to create a monopoly in a line of commerce under the Clayton Act, we must envisage the entire situation affected by the practices, and relate it to the object of both statutes, which is to maintain freedom in interstate commerce and trade and to prevent all attempts to monopolize them. (26) At times, courts speak of the "detriment" to the public resulting from a practice. (27) But they do not intend to legalize restraints

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[23] *Standard Oil Co.* v. *United States*, *supra*, at p. 64. And see, *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 1911, 220 U. S. 373, 406-407; *Apex Hosiery Co.* v. *Leader*, 1940, 310 U. S. 469; *Boro Hall Corp.* v. *General Motors*, 1942, 2 Cir., 124 (F.(2) 822; *United States* v. *Aluminum Co. of America*, 1945, 2 Cir., 148 (F. (2) 416, 427-430; *United States* v. *General Motors*, 1941, 7 Cir., 121 F. (2) 376.

[24] *Judson L. Thompson Mfg. Co.* v. *Federal Trade Commission*, 1945, 1 Cir., 150 F. (2) 952, 955-958.

[25] *Wickard* v. *Filburn*, 1942, 317 U. S. 111, 118-125; *Federal Trade Commission* v. *Morton Salt Co.*, *supra*, at pp. 7-8; *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, *supra*, at pp. 14-19; compare *Standard Fashion Co.* v. *Magrane-Houston Co.*, 1922, 258 U. S. 346, 356-357; *Corn Products Refining Co.* v. *Federal Trade Commission*, 1945, 324 U. S. 726, 738.

[26] *Parker* v. *Brown*, 1943, 317 U. S. 338, 351; *United States* v. *Heating, Piping & Air Conditioning Contractors*, 1940, D. C. Calif., 33 Fed. Sup. 978, 979; *United States* v. *San Francisco Electrical Contractors' Assn.*, 1944, 57 Fed. Sup. 57, 60.

[27] *Standard Oil Co.* v. *Federal Trade Commission*, 1922, 2 Cir., 282 Fed. 81; *Federal Trade Commission* v. *Sinclair Refining Co.*, 1923, 261 U. S.

which *may be* beneficial to the public. As said by Judge Learned Hand:

> "Be that as it may, that was not the way that Congress chose; it did not condone 'good trusts' and condemn 'bad ones'; it forbade all. Moreover, in so doing it was not necessarily actuated by economic motives alone. It is possible, because of its indirect social or moral effect, to prefer a system of small producers, each dependent for his success upon his own skill and character, to one in which the great mass of those engaged must accept the direction of a few. These considerations which we have suggested only as possible purposes of the Act, we think the decisions prove to have been in fact its purposes. It is settled, at least as to Sec. 1, that there are some contracts restricting competition which are unlawful, *no matter how beneficient they may be; no industrial urgency will justify them; they are absolutely forbidden.* Chief Justice Taft said as much of contracts dividing a territory among producers, in the often quoted passage of his opinion in the Circuit Court of Appeals in United States *v.* Addyston Pipe & Steel Co., 6 Cir., 85 Fed. 271, 46 L.R.A. 122." (28)

The harm to the public is gauged by the effect of the practices on the free flow of goods in interstate commerce and the maintenance of competition in that field. Consequently, practices which are likely to curtail or affect injuriously a measurable or sizeable part of commerce are prohibited under both Acts. As I understand the pleadings, and the Government's position at the beginning of the trial, a judgment is sought decreeing that the clause in the contracts which, by its language and actual effect, as shown by the evidence, restricts the stations not employee-operated

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463, 474-475; *International Shoe Company* v. *Federal Trade Commission*, 1930, 280 U. S. 291, 297-298; *United States* v. *Standard Oil Co. of New Jersey*, 1931, D. C. Mo., 47 Fed. (2) 288; *United States* v. *Socony-Vacuum Oil Co.*, 1940, 310 U. S. 150, 220-221.

[28] *United States* v. *Aluminum Company of America*, 1945, 2 Cir., 148 F. (2) 416, 427.

to the sale and use of petroleum products and accessories produced or supplied by Standard is illegal *per se*. We cannot agree. To the contrary, as we read the cases, exclusiveness of outlet is not, in itself, illegal. It becomes illegal only if it results in a substantial lessening of competition or the creation of monopoly in the line of commerce. (29) Indeed, the opinion of the Court in one of the latest cases on the subject indicates clearly that,—to use the language of Mr. Justice Douglas,—"the use of monopoly power, however lawfully acquired, to foreclose competition, *to gain a competitive advantage or to destroy a competitor*, is unlawful." (30)

The phrase "line of commerce" in the Clayton Act is to be given a broad and not a narrow meaning. It should be interpreted, not with relation to a particular outlet, but with relation to the entire "picture",—if one may be permitted to use the best colloquial equivalent to the German word *gestalt* (configuration). So the determination of monopoly in any "line of commerce" cannot be made to rest *solely* on the fact that certain outlets are closed. For, without indulging in a *reductio ad absurdum*, if we say that interfering with *any* outlet is, in itself, a monopoly, we find ourselves in the position of contending that, assuming one controlled one station outlet, we have a monopoly as to it. To amplify: It is common knowledge that national merchandising firms like Sears, Roebuck & Company, or Montgomery Ward, own establishments the country over. It is also well known that they control the type of goods which are sold in the branches, which they use as outlets, and which they own. But, assume that they did not own the branches, and that they operated some of them, under one of these various contract arrangements used here,—say a TBA contract. To my mind, it would be unrealistic to contend that, under

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[29] *Donovan* v. *Pennsylvania Co.*, 1905, 199 U. S. 279, 296-302 (cited with approval in *United States* v. *Yellow Cab Co.*, 1947, 332 U. S. 218, 229); *Pick Mfg. Co.* v. *General Motors Corp.*, 1936, 299 U. S. 3; *Pick Mfg. Co.* v. *General Motors Corp.*, 1935, 7 Cir., 80 F. (2) 641; *Boro Hall Corp.* v. *General Motors Corp.*, 1942, 2 Cir., 124 F. (2) 822; *International Salt Co.* v. *United States*, 1947, 330 U. S. 392; *United States* v. *Griffith etc.*, slip decision No. 64, decided May 3, 1948, p. 7.

[30] *United States* v. *Griffith*, *supra*, at page 7.

such circumstances, the control of one or several such outlets would constitute a monopoly. For this reason, I take the words "in any line of commerce" to mean a complete line of activity, not a *small* segment. This interpretation finds support in the following language of the Supreme Court:

> "The exercise of Congressional power under the Sherman Act, the Clayton Act, the Federal Trade Commission Act, or the National Motor Theft Act, has never been thought to be constitutionally restricted because in any particular case the volume of the commerce affected may be small. *The amount of the commerce regulated is of special significance only to the extent that Congress may be taken to have excluded commerce of small volume from the operation of its regulatory measure by express provision or fair implication.*" (31)

We must, therefore, ascertain the *actual* effect of the challenged clause on interstate commerce.

(D) *Intra and Interstate Activities*

Before doing so; we refer to the contention that the activities of Standard are local in character. Recent cases have obliterated the rigid distinction between infrastate and interstate activities. Activities purely local which interfere with interstate commerce come under the interdiction of the anti-trust statutes. (32) The control of a commodity originating in interstate commerce, although exercised after it comes to rest in a state, does not take it out of the purview of the Sherman or Clayton Acts, if the flow is continuous, and if the restrictions affect it. (33) The latest decisions

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[31] *National Labor Relations Board* v. *Fainblatt*, 1939, 306 U. S. 600, 606; and see, *Signode Steel Strapping Co.* v. *Federal Trade Commission*, 1942, 4 Cir., 132 F. (2) 48, 54.

[32] See cases cited in *United States* v. *Heating, Piping & Air Conditioning Contractors' Ass'n.*, 1940, D. C. Calif., 33 Fed. Sup. 978, and *United States* v. *Francisco Electrical Contractors' Ass'n*, 1944, D. C. Calif., 57 Fed. Sup. 57.

[33] *Mandeville Island Farms Co.* v. *American Crystal Sugar Co.*, 1948, slip decision, pages 14-15.

give effect to the broad definition of commerce contained in one of the older and leading cases on the subject:

> "The evidence shows that they and other defendants conspired to burden the free movement of live poultry into the metropolitan area. It may be assumed that some time after delivery of carload lots by interstate carriers to the receivers the movement of the poultry ceases to be interstate commerce. Public Utilities Comm'n *v.* Landon, 249 U. S. 237, 245; Missouri *v.* Kansas Gas Co., 265 U. S. 298, 309; East Ohio Gas Co. *v.* Tax Comm'n. 283 U. S. 465, 470-471. But we need not decide when interstate commerce ends and that which is intrastate begins. *The control of the handling, the sales and the prices at the place of origin before the interstate journey begins or in the State of destination where the interstate movement ends may operate directly to restrain and monopolize interstate commerce.*" (34)

Without detailing the distributive system used by Standard, it is evident that there is constant interstate flow of the products it produces and distributes. And the interstate origin of the many competitive products, automobile supplies and accessories is also established. (35)

This satisfies fully the requirement of the statutes. For, if the exclusive supply agreements complained of by the Government be unreasonable or monopolistic in effect, they would affect the flow of commerce in several ways: (1) by channeling the products of Standard, regardless of interstate or intrastate source, through an exclusive group of

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[34] *Local* 167 *National Brotherhood of Teamsters* v. *United States*, 1939, 291 U. S. 286, 297 (Emphasis added); See, *Allen Bradley* v. *Local Union No. 3*, 1945, 325 U. S. 797, 810-811; *United Brotherhood of Carpenters* v. *United States*, 1947, 330 U. S. 395.

[35] See end of Part I and cases cited in Note 3. See also, *United States* v. *Yellow Cab Co.*, 1947, 332 U. S. 218, 224-228; *McComb* v. *Herlihy*, 1947, 4 Cir., 161 F. (2) 568, 570-571; see my opinion in *Devine* v. *Handy*, 1948, D. C. Calif., 76 Fed. Sup. ——. And for a comprehensive survey of the recent broadening of the concept of commerce, see, *Stern, The Commerce Clause and The National Economy*, 1933-1946, 59 Harvard Law Review, 1946, pp. 645, 883.

outlets; (2) by denying to dealers the right to buy them; and (3) by denying to manufacturers of competitive products the right to sell to the controlled outlets.

Whether they actually have such effect is our final inquiry.

III

The Consequences of the Exclusive Supply Provisions

(A) *The "Appreciable Segment" Test*

In the Associated Press case (36), the Supreme Court has set out criteria for determining the forbidden character of restrictive outlets under the Sherman Act, which are pertinent to the facts in this case:

> "The restraint on trade in news here were no less than those held to fall within the ban of the Sherman Act with reference to combinations to restrain trade outlets in the sale of tiles, Montague & Co. *v.* Lowry, 1932 U. S. 38; or enameled ironware, Standard Sanitary Mfg. Co. *v.* United States, 226 U. S. 20, 48-49; or lumber, Eastern States Lumber Dealers' Ass'n *v.* United States, 234 U. S. 600, 611; or women's clothes, Fashion Originators' Guild *v.* Federal Trade Commission, supra; or motion pictures, United States *v.* Crescent Amusement Co., 323 U. S. 173. Here as in the Fashion Originators' Guild case, supra, 465, 'the combination is in reality an extra-governmental agency, which prescribes rules for the regulation and restraint of interstate commerce, and provides extra-judicial tribunals for determination and punishment of violations, and thus 'trenches upon the power of the national legislature and violates the statute.' Addyston Pipe & Steel Co. *v.* United States, 175 U. S. 211, 242. By the restrictive By Laws each of the publishers in the combination has, in effect, 'surrendered himself completely to the control of the association.', Anderson *v.* Shipowners' Assn., 272 U. S. 359, 362, in respect to the disposition of news in interstate commerce. Therefore

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[36] *Associated Press* v. *United States*, 1945, 326 U. S. 1.

this contractual restraint of interstate trade, 'designed in the interest of preventing competition', cannot be one of the 'normal and usual agreements in aid of trade and commerce which may be found not to be within the (Sherman) Act . . .'' Eastern States Lumber Dealers' Assn. v. United States, supra, 612, 613.'' (37)

This is anticipatory of the criterion of ''appreciable segment'' as a test of unreasonableness or monopolistic substantiality, established in later cases. (38)

Some writers have expressed the view that the more recent decisions, and especially the Yellow Cab decision, substitutes a new and uniform concept or standard of illegality for the older ones under the Sherman Act, which considers the effect on ''an appreciable segment'' of commerce the test. They see in this the abandonment of the older, ''quantitative'' postulate which related the amount of the commerce involved to the whole commerce in the nation. (40) But I find the nucleus of this norm not only in the Associated Press case (41), but in older cases. (42) Thus, in a case involving control of advertising media in a certain field as the basis for a damage action under the Sherman Anti-Trust law, the Supreme Court held that it was invalid, although it applied to a limited geographic area or to a part of the commerce only. The Court used this language:

''The record contains no suggestion by respondents or by either court that petitioner's allegations are not sufficient to charge a violation of Secs. 1 and 2. Its right to recover does not depend upon the proportion that respondents control of the total farm paper advertisements in the entire country, and it was not required to prove that respondents imposed a restraint

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[37] *Associated Press* v. *United States*, *supra*, pp. 18-19.

[38] *United States* v. *Yellow Cab Co.*, 1947, 332 U. S. 218, 224-228.

[39] *United States* v. *Yellow Cab Co.*, *supra*, at p. 218.

[40] See Zlinkoff & Barnard: *The Supreme Court and a Competitive Economy*, 1947, 47 Columbia Law Review, pp. 914, 926-932.

[41] *Associated Press* v. *United States*, 1945, 326 U. S. 1.

[42] *Indiana Farmer's Guide Co.* v. *Prairie Farmer Publishing Co.*, 1934, 293 U. S. 268.

or attempted monopolization that would affect all commercial advertisements in all farm papers wherever published or circulated. The provisions of Secs. 1 and 2 have both a geographical and distributive significance and apply to any part of the United States as distinguished from the whole and to any part of the classes of things forming a part of interstate commerce. Standard Oil Co. *v.* United States, 221 U. S. 1, 61." (43)

And there is one lower court, well considered decision which found an illegal restriction in a limitation to a particular large customer,—the United States Government. (44)

It was insisted at the oral argument that the late cases, especially the Yellow Cab case (45), having arisen under the Sherman Act, do not control here. Granted that these rulings interpret that Act, they are, nonetheless, applicable to the present case for the obvious reason that the violations which the Government in this case charges are violations of both the Sherman and Clayton Acts.

As a rule, language used in interpreting one statute is not conclusive of the meaning of other kindred statutes. However, the history of Anti-Trust legislation shows that less is required to prove illegality under the Sherman Act than under the Clayton Act. Rightly. For the object of the Clayton Act was to declare illegal, in their incipiency, acts which would only be illegal under the Sherman Act *in their full fruition*. Differently put, what, *in its result*, is an unreasonable restraint under the Sherman Act is, *in its beginning*, a substantial restraint under the Clayton Act, *if it is of a nature* likely to achieve such result.

It is argued that to apply this criterion would result in anomolous situations: If the operators of stations, instead of agreeing to buy their "requirements" of petroleum prod-

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[43] *Indiana Farmer's Guide Co.* v. *Prairie Farmer Publishing Co., supra,* at p. 278. And see, *United States* v. *Bausch & Lomb Optical Co.*, 1944, 321 U. S. 707, 720-724.

[44] *United States* v. *Clear Flax Linen Looms, Inc.*, 1945, D. C. Minn. 63 Fed. Sup. 32.

[45] *United States* v. *Yellow Cab Co.*, 1948, 332 U. S. 218.

ucts, agreed to buy a definite quantity over a period of time, sufficient to satisfy their needs, this arrangement would, just as effectively, shut out competition. And yet, it is insisted that, although such arrangement would achieve the same result, it would not fall within any of the prohibitions of the anti-trust statutes.

But there is a distinction between the two situations. When a dealer agrees to take a specific amount of a product, there is a likelihood that *he may*, in case of failure of the supplier to comply with the agreement, or unexpected shortages or increased demands, or a desire to anticipate such shortages or demands, by overstocking,—seek competitive products. There is thus a possibility of access by competitors to the particular outlets.

Under the "requirements" contracts, the chance is completely cut off. Briefly stated, without a "requirements" contract, competitors may, in time, induce dealers to handle their products. With a contract, they never can. There is opportunity to deal with the competitors, and, hence, possibility,—nay, probability, of freedom of action, when there is no restrictive contract. There is complete and final absence of freedom of dealing during the life of a contract, when it calls for exclusion. The shut-out is just as effective as an agreement to boycott products originating in interstate commerce. (46) Both "restrain or control the supply

(B) *Restraint: Entire or Fractional:*

(1) Comparative Figures:

The turn which our consideration of the case has taken calls for a statement of additional facts which, in fairness

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[46] See, *Coronado Coal Co.* v. *United Mine Workers*, 1925, 268 U. S. 295, 310; *Bedford Cut Stone Co.* v. *Stone Cutter's Ass'n*, 1927, 284 U. S. 37, 49; *Local 167* v. *United States*, 1934, 291 U. S. 293, 297; *United States* v. *Socony-Vacuum Oil Co.*, 1940, 310 U. S. 150, 212-218; *United Brotherhood of Carpenters* v. *United States*, 1947, 330 U. S. 395; and see my opinion in *United States* v. *Heating, Piping & Air Conditioning Contractors' Ass'n*, 1940, D. C. Cal., 33 Fed. Sup. 395.

entering and moving in interstate commerce". (47)

[47] *Coronado Coal Co.* v. *United Mine Workers, supra,* at p. 310.

[48] See Part III, (A) and cases cited in Footnotes 36 to 45.

to the defendants, should be referred to, because they are the foundation for the contention that the practices here under attack do not violate either statute. They also serve to point to the fact that, in this case, the problem which confronts the court is to determine, in the light of the latest cases of the Supreme Court, which of the two methods of assaying specific facts which, in the main, are not in dispute, should control.

The facts to be alluded to present one facet of the problem. The practices which the Government seeks to prohibit are not of recent origin. To the contrary, they have been in effect for over 15 years. They are employed not only by Standard, but by its competitors in the Western Area, especially the "majors,"—Associated, Shell, General Petroleum, Texas Co., Union Oil Co., Richfield,—as their representatives have so forthrightly admitted. The following statistical data, culled from the record, show the comparative position of Standard in relation to its major competitors, omitting, for brevity, the comparative number of stations:

Gasoline Sales

State	Year	State Total	Retail Gallonage S. S. Inc.	Retail Gallonage Dealers	% of Total S. S. Inc.	% of Total Dealers
Calif.	1931	1,401,545	65,149	71,251	4.6	5.1
	1946	2,640,651	209,587	135,455	7.9	5.1
Oregon	1931	170,357	4,782	25,633	2.8	15.0
	1946	376,288	18,467	36,198	4.9	9.6
Wash.	1931	270,901	8,232	26,266	3.0	13.4
	1946	491,301	23,021	43,606	4.7	8.9
Ariz.	1931	99,564	1,210	11,994	1.2	12.0
	1946	170,075	11,973	16,526	7.0	9.7
Nev.	1931	22,549	303	3,576	1.3	15.9
	1946	55,079	3,785	8,287	6.9	15.0
Idaho	1931	59,293	150	5,396	0.3	9.1
	1946	143,304	2,417	14,576	1.7	10.2
Utah	1931	60,731	–	4,114	–	6.8
	1946	146,644	4,649	13,920	3.2	9.5
7 Western States	1931	2,084,940	79,825	158,299	3.8	7.6
	1946	4,023,342	273,899	268,568	6.8	6.7

Tire Replacement Shipments

State	Year	State Total	Retail Sales S. S. Inc.	Retail Sales Dealers	% of State Totals S. S. Inc.	% of State Totals Dealers
Calif.	1933	2,706,750	94,366	3,441	3.5	.1
	1946	5,985,786	130,079	79,502	2.2	1.3
Oregon	1933	328,189	15,750	1,041	4.4	.3
	1946	890,664	14,296	29,073	1.5	3.4
Wash.	1933	588,141	15,750	2,557	2.7	.4
	1946	1,244,310	14,296	30,688	1.1	2.5
Ariz.	1933	123,477	6,220	4,538	5.0	3.7
	1946	307,803	10,060	16,152	3.3	4.4
Nevada	1933	38,993	1,059	1,442	2.7	3.7
	1946	98,235	3,000	4,307	3.1	4.4
Idaho	1933	133,225	397	11	.3	2.4
	1946	327,450	2,294	9,511	.7	2.9
Utah	1933	136,475	132	21	.1	.0
	1946	327,450	3,530	10,229	1.1	3.1
Seven Western States	1933	4,055,250	132,350	10,523	3.3	.3
	1946	9,181,698	176,496	179,462	1.9	2.0

Replacement Battery Sales

State	Year	State Total	Retail Sales S. S. Inc.	Retail Sales Dealers	% of State Total S. S. Inc.	% of State Total Dealers
Calif.	1933	718,108	17,670	58	2.5	–
	1946	1,601,511	51,328	21,281	3.2	1.3
Oregon	1933	87,070	1,455	17	1.7	–
	1946	238,299	4,376	5,083	1.8	2.1
Wash.	1933	156,036	2,240	42	1.4	–
	1946	332,918	6,042	7,366	1.8	2.2
Ariz.	1933	32,759	806	33	2.5	0.1
	1946	82,353	3,542	3,877	4.3	4.7
Nevada	1933	10,345	134	24	1.3	0.2
	1946	26,383	1,459	1,120	5.6	4.3
Idaho	1933	35,345	68	–	0.2	–
	1946	87,610	1,042	2,369	1.2	2.7
Utah	1933	36,207	22	–	0.1	–
	1946	87,610	1,667	1,982	1.9	2.3
Seven Western States	1933	1,075,870	22,395	174	2.1	–
	1946	2,456,584	69,456	43,078	2.8	1.8

Certain general inferences were drawn from these facts, at the argument. They are: The actual increase in the sale of petroleum products corresponds to the rise in the whole industry. The number of outlets over a period of ten years has been reduced from an average of 7650 to 6000. Between 1936 and 1946, Standard sales of gasoline increased 58.8 per cent. The industry increase for the same period was 64.7 per cent. For lubricating oil, Standard's increase was 62.9 per cent, the industry increase, 104.8 per cent. As to

batteries, the increase in units for Standard was 46.5 per cent, for the industry, 41.8 per cent. The comparative figures, as to the increase for some of the other companies are: *Gasoline*: Union Oil Company, 90 per cent; General Petroleum, 165 per cent; and Tidewater Associated, 34 per cent. *Lubricating Oil*: Union Oil Company, 98.2 per cent; General Petroleum, 174.9 per cent; and Tidewater Associated, 54.8 per cent.

Macmillan dispenses their lubricating oil through some 10,000 accounts in the seven Western states. For Pennzoil Company, the outlets in 1916 were 2000, in 1946, 12,000. For Arthur Haven Company, the outlets were 3500 in 1946, in 1947, 7,000. During this period, the number of outlets for Standard was 5197. During the same period, the number of independent stations which handle gasoline of different companies, or, what has been referred to as "split pump" accounts, has increased, although they represent only 1.6 per cent of all the stations. Between 1931 and 1941, —a ten-year period,—Standard constructed only 8 per cent of the newly constructed service stations upon vacant sites. Between 1942 and 1947, Standard's proportion of new construction was 8.7 per cent.

(2) The Other Side of the Shield:

The other aspect of the problem must take into consideration the following facts: The gallonage of gasoline marketed has risen and the value of the commerce in petroleum and other products was $68,000,000.00 in 1947. The following statistical data bear on the extent of this commerce.

Total gross quantities of gasoline shipped from Standard Oil Company of California refineries (Richmond, El Segundo and Bakersfield)

Year	Calif.	Ariz.	Nevada	Oregon	Wash.	Utah	Idaho
1946	15,371,753	698,933	391,715	3,289,260	3,827,403	45,351	2,254
1947	18,106,788	931,199	418,062	3,707,282	3,161,576	36,551	920

Note: Gasoline shipped above is in general delivered to Company's storage. Requirements of all classes of trade are filled from such storage, and the Company has no records which would show what part of the above gasoline was received for distribution or sale to retail outlets.

* * * * *

Total gross quantities of automobile lubricating oils sold by Standard Oil Company of California and Standard Stations, Inc. Such oils were shipped from Richmond and El Segundo Refineries (42 Gal. Barrels)

Year	Calif.	Ariz.	Nevada	Oregon	Wash.	Utah	Idaho
1946	492,226	27,012	9,569	63,525	79,982	17,016	14,177
1947	570,012	26,549	9,503	62,002	81,153	18,665	14,955

Note: Company records are not kept showing shipments by state of destination. Above represents sales by States—export sales are no shown.

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Total Gross Quantities of Gasoline Purchased or Acquired By Standard Oil Company of California
(Other Than From Its Own California Refineries)

	Calif.	Ariz.	Nev.	Ore.	Wash.	Utah	Idaho	N. M.	Texas
1946									
State from which shipped	.....	.....	.....	.....	.....	639,458	.....	4,032	233,570
State of destination	.....	237,602	.....	.....	.....	471,735	168,083	.....	.....
1947									
State from which shipped	.....	.....	.....	.....	.....	829,189	.....	13,368	101,307
State of destination	.....	114,675	.....	.....	.....	630,146	199,043	.....	.....

Note: Gasoline received above is in general delivered to Company Storage. Requirements of all classes of trade are filled from such storage and the Company has no records which would show what part of the above gasoline was received for distribution or sale to retail outlets.

Note: The above gasoline was acquired by purchase.

[Continued on next page]

Total Gross Quantities of Gasoline Sold By Standard Oil Company of California to Retail Dealers—(42 Gallon barrels)

Year	Calif.	Ariz.	Nev.	Oregon	Wash.	Utah	Idaho
1946	3,225,122	393,467	197,310	861,865	1,038,245	331,431	347,054
1947	2,937,558	431,385	223,973	1,040,264	1,233,551	365,244	393,200

Total Gross Quantities of Automotive Lubricating Oil Sold Retail Outlets Operated By Standard Oil Company of California (Standard Stations, Inc.) (42 Gal. Barrels)

Year	Calif.	Ariz.	Nev.	Oregon	Wash.	Utah	Idaho
1946	72,928	8,871	4,450	19,475	23,448	7,469	7,830
1947	77,128	8,432	4,373	20,342	24,148	7,134	7,686

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Total Gross Quantities of Gasoline Sold At Retail Outlets Operated By Standard Oil Company of California (Standard Stations, Inc.) (42 Gallon Barrels)

Year	Calif.	Arizona	Nevada	Oregon	Wash.	Utah	Idaho
1946	4,990,166	285,078	90,125	439,695	548,110	110,693	57,548
1947	5,343,288	293,355	112,179	502,070	604,133	121,109	67,200

* * * * * *

Total Gross Quantities of Automotive Lubricating Oils Sold at Retail Outlets Operated By Standard Oil Company of California (Standard Stations, Inc.) (42 Gallon Barrels)

1946	80,064	5,836	1,796	8,213	10,458	2,317	1,272
1947	77,265	5,210	1,969	8,311	10,380	2,259	1,369

* * * * * *

Total number of tires, tubes, batteries and other automotive accessories shipped by companies manufacturing or supplying the same to Standard Oil Company of California and/or Standard Stations, Inc., or to others on the order of Standard Oil Company of California and/or Standard Stations, Inc., from States outside of California, Oregon, Washington, Arizona, Nevada, Idaho and Utah.

State into which shipped	1946 Tires	Tubes	Batteries
California	.....	19,998	4,950
Oregon	.....	.....	.....
Washington	.....	.....	.....
Arizona	.....	.....	.....
Nevada	.....	.....	.....
Utah	.....	.....	.....
Idaho	.....	.....	.....
Total	.....	19,998(1)	4,950(2)

State into which Shipped	1947 Tires	Tubes	Batteries
California	31,158	.....	1,692(3)(4)
Oregon	8,459	5,004	800(4)
Washington	10,226	.....	.....
Arizona	3,969	.....	1,268(3)
Nevada	.....	.....	.....
Utah	3,509	.....	879
Idaho	.....	.....	.....
Total	57,321(5)	5,004(1)	4,639

Note: Source: (1) Alabama; (2) Pennsylvania; (3) Texas; (4) Oklahoma; (5) Michigan.

(3) The Inconclusiveness of Comparative Figures:

Over the Government's objection, I allowed many comparative statistics, of which the foregoing are examples, to go into the record. This was consistent with the view that in resolving the issues of this case, the potential or actual effect of the agreements is important in determining reasonable of restraint under the Sherman Act and substantiality of restraint or tendency to create monopoly under the Clayton Act.

But, while the comparative figures bear on the question, they are not determinate. Substantiality of restraint or tendency to create monopoly is established by (a) the market foreclosed,—here represented by the controlled units,—and (b) the volume of controlled business, totalling here in value $68,000,000.00.

Fractionally speaking, the business done by the competitors with their own outlets or with those under contract is much greater than the business of Standard,—both in volume and in money value. Nevertheless, the business of Standard is considerable. In effect, it amounts to a sub-

stantial lessening of competition and a monopoly of a sizeable segment of a line of commerce in a definite area—the seven Western states. What has *the tendency* to achieve such result becomes, *in actual effect*, an unreasonable restraint. Even before adopting the "appreciable segment" test (48), the Supreme Court sought to avoid a rigid formula for finding reasonableness or unreasonableness. In the *Trenton Potteries* case, Mr. Justice Stone stated:

> "Reasonableness is not a concept of definite and unchanging content. Its meaning necessarily varies in the different fields of the law, because it is used as a convenient summary of the dominant considerations which control in the application of legal doctrines. Our view of what is a reasonable restraint of commerce is controlled by the recognized purpose of the Sherman Law itself. Whether this type of restraint is reasonable or not must be judged in part at least in the light of its effect on competition, for whatever difference of opinion there may be among economists, as to the social and economic desirability of an unrestrained competitive system, it cannot be doubted that the Sherman Law and the judicial decisions interpreting it *are based upon the assumption that the public interest is best protected from the evils of monopoly * * * by the maintenance of competition.*" (49)

It follows that there is illegal restraint here under both Acts, whether the commerce be considered quantitatively or comparatively.

(4) Application to Sub-leases and Open Accounts.

We need not dwell at length on the contention that the stations operated under a sub-lease or on open account must be omitted from consideration. It is true that the Clayton Act (50) speaks of leases of goods. And it may

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[49] *United States* v. *Trenton Potteries*, 1926, 273 U. S. 392, 397. (Emphasis added)

[50] 15 U.S.C.A., Sec. 14; *Curtis Publishing Co.* v. *Federal Trade Commission*, 1921, 3 Cir., 270 Fed. 881, 906; *Associated Oil Co.* v. *Meyers*, 1933, 217 Cal. 297, 304-306.

be conceded that the statute does not apply to leases on real property. And, generally speaking, a sub-lease is not a lease. But, as I stated at the oral argument, the designation which the parties have given to an instrument is not conclusive. We are dealing with an important governmental policy of long duration, established by a statute which became effective on July 2, 1890 (51), and implemented by a subsequent statute, which became effective on October 14, 1914 (52). Our duty is to give effect to it. If the practices involved in the case are contrary to the provisions of either statute, the character of the instrument in which they are contained is not important. The Sherman Act refers to contracts. (53) The Clayton Act refers to leases, sales or contracts. But, in setting the boundaries of illegality, it speaks of conditions, agreements, or understandings that the lessee or purchaser shall not use or deal in competitive goods, and which may result in the restraints condemned by the statute. (54) The Complaint is drawn under both statutes. Ordinarily, a lease deals with the term, the rent to be paid, and the type of business to be conducted on the premises. But, if, in addition, it says whose goods or products should be handled on the premises, we have a condition, agreement or understanding which has nothing to do with the lease proper, and which is within the scope of our inquiry. And if the exclusive supply undertaking, whether contained in a lease, or lurking behind an open account, has the effect condemned by the statute, it is within its prohibitions.

(5) Source of Products.

For the purpose of distributing the petroleum products, both in bulk and packaged, supplied by the California refineries of Standard, the territory is divided into twenty-

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[51] 15 U.S.C.A., Sec. 1.

[52] 15 U.S.C.A., Sec. 14.

[53] 15 U.S.C.A., Sec. 1.

[54] 15 U.S.C.A., Sec. 14.

[55] See, *United Shoe Machinery Co.* v. *United States*, 1922, 258 U. S. 451, 457-458; *Standard Fashion Co.* v. *Magrane-Houston Co.*, 1922, 258 U. S. 346, 354-355.

three distributive areas. These areas are supplied bulk products by tank cars or tank trucks from various points, which, in turn, are supplied by tanker from the refineries.

Package goods are supplied by box cars and package trucks from the various refineries. For this purpose, the territory is divided into four areas. The accessories are supplied from eight accessory warehouses, their location and the dealers they serve being:

San Francisco—serves Central and Northern California; also dealers in Northwestern Nevada; also Lakeview District in Southern Oregon.

Salt Lake City—serves all Utah, Arizona, North of Grand Canyon, Eastern and Northern Nevada and Southeastern Idaho.

Phoenix—confined to the State of Arizona and Needles across the Colorado River in California.

Los Angeles—Southern California and Southern Nevada.

Fresno—within the State of California.

Portland—Oregon, Southern Washington and Southwestern Idaho.

Seattle—Washington only.

Spokane—Eastern Washington and Northern Idaho.

The point is pressed that some of the products, such as gasoline, are supplied to California stations exclusively from California refineries. And it is argued that, so far as the California stations are concerned, their dealings in gasoline are beyond the purview of interstate commerce.

We are not dealing here with commerce in different articles. We are dealing with contracts and practices which are alleged to be illegal under the Anti-Trust Acts. These contracts, which have been epitomized in the first part of this opinion (56), cover *specifically* all petroleum products and tires, tubes and batteries. They also affect dealings in other accessories. We need not, therefore,—nay, we cannot—make a segregation, so as to exclude any item which may have both state provenance and destination in the Western area. The contract is an entirety and cannot be split. More, under the Clayton Act, if a contract has a

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[56] See Part I of Opinion.

tendency to lessen competition substantially, or to create a monopoly, the fact that it may also affect the movement of goods in intrastate commerce does not validate it, if its whole effect is likely to be a lessening of competition or monopoly in a sizeable and measurable segment of interstate commerce. In interpreting statutes of this character, and, generally, any legislation which aims to carry into effect the plenary power of the Congress to regulate commerce, it is accepted constitutional doctrine that the power to control is not destroyed by the mere fact that purely intrastate activities may also be reached by it. (57)

More, as already shown, there is a constant flow in interstate commerce of these products and supplies. (58) The contracts affect, and the transactions under them are in the course of, interstate commerce. And the practice must also be considered from the effect on the dealers and the competitive suppliers. If, as to them, it results in an effective lock-out of a considerable supply of goods of interstate source, the contracts which carry the practice into effect are invalid.

V

Conclusion and Findings

(1) Summary of Conclusions:

So we come to the end of our discussion. Grant that, on a comparative basis, and in relation to the entire trade in these products in the area, the restraint is not integral. Admit also that control of distribution results in lessening of costs and that its abandonment might increase costs. Despite all this, there confronts us the inescapable fact that such "balanced distribution"—as counsel for the defendants characterize it,—calls for concentration of representation, which, in turn, results in an unreasonable restriction of trade, and a substantial lessening of competition, so far as the 5197 outlets, their independent operators and those

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[57] See Part II-(D), and cases cited in Footnotes 32 to 35. And see, *United States* v. *Wrightwood Dairy Co.*, 1942, 315 U. S. 110; *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 1942, 314 U. S. 498; and see my opinion in *Holl* v. *Southern Pacific Co.*, 1947, D. C. Calif., 71 Fed. Sup. 21, 23-24.

who seek to supply them, are concerned. As the restriction corners a market of the value of $68,000,000.00, it is illegal, even considered on a comparative basis. Concede further, that the arrangement was entered into in good faith, with the honest belief that control of distribution and consequent concentration of representation were economically beneficial (58) to the industry and to the public, that they have con-

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[58] *United States* v. *Trenton Potteries*, 1926, 273 U. S. 392, 397; and see cases cited in Footnotes 9 to 13. General statements on discontinuity as an element in fixing the intrastate character of a transaction, such as those quoted and relied on, from *Jewel Tea Co.* v. *Williams*, 1941, 10 Cir., 118 F. (2) 203, 206-207, are not very helpful. They must be evaluated only in relation to the situation under review in the particular case, and in the light of the later Supreme Court decisions, which have modified greatly the concept they seek to perpetuate. The case in which they are found was decided *in 1941*. In *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, *decided in 1944*, the Supreme Court refused to apply rigidly the formula of pause or stoppage. The Court said:

> "The record reveals, however, that the goods in both of these two categories are ordered pursuant to a preexisting contract or understanding with the customer. It is not clear whether the decision of the Circuit Court of Appeals includes these two types of transactions in the group of prior orders which it held were covered by the Act. We think they must be included. Certainly they cannot be distinguished from the special orders which respondent receives from its customers. Here also, *a break in their physical continuity of transit is not controlling. If there is a practical continuity of movement from the manufacturers or suppliers without the state, through respondent's warehouse and on to customers whose prior orders or contracts are being filled, the interstate journey is not ended by reason of a temporary holding of the goods at the warehouse. The fact that respondent may treat the goods as stock in trade or the circumstance that title to the goods passes to respondent on the intermediate delivery does not mean that the interstate journey ends at the warehouse.* The contract or understanding pursuant to which goods are ordered, like a special order, indicates where it was intended that the interstate movement should terminate. Numerous authorities are pressed on us for the contrary view and for the conclusion that when the goods enter the warehouse, they are no longer 'in commerce.' But as we stated in *Kirschbaum* v. *Walling*, 316 U. S. 517, 520-521, decisions dealing with various assertions of state or federal power in the commerce field are not particularly helpful in determining the reach of this Act." (*Walling* v. *Jacksonville Paper Co., supra*, at pp. 568-569) (Emphasis added)

tinued for over fifteen years openly, notoriously and unmolested by the Government, and have been practiced by other major oil companies competing with Standard, that the number of Standard outlets so controlled may have decreased, and the quantity of products supplied to them may have declined, on a comparative basis. Nevertheless, as I read the latest cases of the Supreme Court, I am compelled to find the practices here involved to be violative of both statutes. For they affect injuriously a sizeable part of interstate commerce, or,—to use the current phrase—"an appreciable segment" of interstate commerce.

(2) Specific Findings:

So the facts proved and the legal principles applicable command the following findings:

1. The exclusive supply agreements relate to interstate commerce.

2. They affect, and the transactions under them are, in the course of, interstate commerce.

3. The relation established by the agreements between the operators and Standard is not that of employer and employee, but that of independent contractor.

4. The agreements confine the operators of stations to which they apply to dealing in Standard products, and automotive accessories handled or sponsored by them.

5. They lock out dealers from sources of competitive products originating in interstate commerce.

6. They deny to dealers access to such competitive products.

7. They deny to manufacturers or suppliers of such products access to the outlets controlled by the independent contractors who operate the stations.

F. (2) 348, 351, *decided after* the *Jacksonville Paper Co.* case, and in which *the same court* which decided the *Jewel Tea Company* case applies a more flexible concept, which accords with the latest rulings of the Supreme Court.

8. They affect a substantial number of outlets and a substantial amount of products, whether considered comparatively or not.

9. They constitute an unreasonable restraint of trade and commerce among the States, under the Sherman Anti-Trust Act. (59)

10. They result in a substantial lessening of competition and tend to create a monopoly in a line of commerce, in contravention of the Clayton Act. (60)

11. They are illegal *in their effect* and should be enjoined.

Judgment will, therefore, be for the plaintiff. The terms of the judgment are contained in an order filed simultaneously.

Dated this 7th day of June, 1948.

LEON R. YANKWICH (S.),
United States District Judge.

[59] See Part II-(D) of opinion, and cases cited in Footnotes 32 to 35.
[60] 15 U.S.C.A., Sec. 1.
[61] 15 U.S.C.A., Sec. 14.

APPENDIX B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 6159-Y Civil

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., *Defendants*

Supplemental Opinion

YANKWICH, *District Judge:*

I

The Motion to Reconsider

On the same day on which the opinion in this case was filed, June 7, 1948, the Supreme Court decided United States v. Columbia Steel Company, et al. (1) On June 16, 1948, the defendants in this case filed a notice of motion for "reopening, reargument and reconsideration." This was followed by the motion itself, which, originally noticed for June 28, 1948, was advanced to, and actually made, on June 24, 1948, and submitted. It seeks a decision, findings and judgment in favor of the defendants.

I doubt if a motion of this character, which is akin to the motion for "another and different judgment" under California practice (2), can be entertained in our court, either before or after formal findings and judgment are filed. However, neither in the case in which I expressed such doubt (3), nor in a more recent case in which a similar mo-

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[1] *United States* v. *Columbia Steel Company, et al.*, No. 461, October term.

[2] *California Code of Civil Procedure*, Sec. 663.

[3] *Brooks Bros.* v. *Brooks Clothing Co. of California*, 1945, D. C. Calif., 5 F.R.D. 14.

tion was made (4), did I allow this to stand in the way of determining the motion on the merits. Nor will I do so now. For I grant that a judge may, at any time before finality attaches to his decision, change his views on the law of a case or the conclusions to be reached as to a controversy or a specific phase of it (5). More, it would be the imperative duty of any judge of a lower court to give effect to a decision of the highest court of the land, announced subsequent to, or simultaneously with, his decision, and which called for a modification of his views. And such action would be obligatory, whether the higher court spoke with unanimity or was divided, or even if the judge agreed with the minority opinion. When such a situation confronted me several years ago, I wrote:

> "I feel compelled by this decision to hold that the new enactment, Chapter 10 of the Bankruptcy Act, in so far as it applies to irrigation districts of the type of the petitioner, is constitutionally vulnerable, as was the old. As a student, exercising private judgment, I agree with the conclusion of the dissenters that immunity from interference through federal bankruptcy laws, even if applicable to states, should not be extended to state instrumentalities, whether they be municipal, quasi-municipal or public corporations. *However, as a judge* of a lower court, I cannot exercise private judgment, but must follow the opinion of the majority, which, as I read it, extends the immunity to all governmental agencies created by a state for the performance of public functions." (6)

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[4] *Blanchard* v. *Pinkerton*, No. 7738, an opinion which was filed on May 13, 1948, but which has not yet been published.

[5] See, *G. Amsinck & Co., Inc.* v. *Springfield Grocer Co.*, 1925, 8 Cir., 7 F. (2) 855, 857-858; *Continental National Bank* v. *National City Bank*, 1934, 9 Cir., 69 F. (2) 312, 317-318. While the cases just cited arose prior to the effective date of the Federal Rules of Civil Procedure, the right of a court to change its conclusions before final judgment is recognized, in cases decided since the rules went into effect. See *Marconi Wireless Co.* v. *United States*, 1943, 320 U. S. 47, 48.

[6] In re Lindsay-Strathmore Irrigation District, 1937, D. C. Calif., 21 Fed. Sup. 129, 135. Emphasis added.

Counsel for the defendants who are, no doubt, familiar with our practice in this respect, have assumed that I would hear the motion on the merits. For, in addition to referring to cases which recognizes the right of a court to reconsider its decision (7), they filed simultaneously a twenty-page printed memorandum, the aim of which is to show "that the decision of the Supreme Court in United States v. Columbia Steel Company, requires a decision in favor of the defendants."

Hence the notice, the brief and the motion itself, which is now before me for decision, all call for a determination of the question propounded by the defendants whether the decision referred to commands a ruling in the present case in favor of the defendants.

II

The Scope of United States v. Columbia Steel Co.

I am of the view that it does not call for a different conclusion than that announced on June 7, 1948. At the outset, I advert to the fact that the range of the ruling I made is not to be determined by the arguments which the Government advanced, *but by what was actually decided.* The fact that in the *Columbia Steel Company* case the Government may have made arguments similar to those made in this case loses all significance, if, *in fact,* my ruling was contrary to the contention. To illustrate: The Government, in the present case, contended that the exclusive supply provision in the Standard contracts was illegal *per se.* I declined to so hold. On the contrary, I ruled that it was illegal *only if it resulted in an unreasonable restraint under the Sherman Act or in substantial lessening of competition under the Clayton Act.* (8) I wrote;

> "As I understand the pleadings, and the Government's position at the beginning of the trial, a judgment is sought decreeing that the clause in the contracts which, by its language and actual effect, as shown by

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[7] See cases in Footnote No. 5.

[8] See Opinion pages 11-27.

the evidence, restricts the stations not employe-operated to the sale and use of petroleum products and accessories produced or supplied by Standard is illegal *per se*. We cannot agree. To the contrary, as we read the cases, exclusiveness of outlet is not, in itself, illegal. It becomes illegal only if it result in a substantial lessening of competition or the creation of monopoly in the line of commerce." (9).

The Supreme Court in the Columbia Steel Co. case, interprets its own prior decisions, and especially the Yellow Cab decision (10), in the same manner. Mr. Justice Reed, after referring to the Government's contention that such contracts are illegal *per se*, says:

> "We do not construe our holding in the Yellow Cab case to make illegal the acquisition by United States Steel of this outlet for its rolled steel without consideration of its effect on the opportunities of other competitor producers to market their rolled steel. In discussing the charge in the Yellow Cab case, we said that the fact that the conspirators were integrated did not insulate them from the act, not that corporate integration violated the act. In the complaint the government charged that the defendants had combined and conspired to effect the restraints in question with the intent and purpose of monopolizing the cab business in certain cities, and on motion to dismiss that allegation was accepted as true. Where a complaint charges such an unreasonable restraint as the facts of the Yellow Cab case show, the amount of interstate trade affected is immaterial in determining whether a violation of the Sherman Act has been charged." (11)

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[9] See Opinion pages 27-28.

[10] *United States* v. *Yellow Cab Co.*, 1947, 332 U. S. 218.

[11] *United States* v. *Columbia Steel Co.*, slip decision, pages 24-25. It is to be observed that Mr. Justice Reed in Footnote No. 17 of the Opinion quoted a portion of the Yellow Cab opinion which laid great stress on the effect of a restraint on commerce in a given area, and which adopted the language in *Indiana Farmers Guide Co.* v. *Prairie Farmer Co.*, 1934, 293 U. S. 268, 279, which I stressed in the opinion. (See pp. 44-45 of my opinion.)

And even the adoption of the Government's contention by a lower court in one case and its rejection in another by a higher court does not, *necessarily*, mean that *the facts in both cases call for the same decision*.

III

The Grounds of the Columbia Steel Co. Decision

Unlike the present case which charged violation of *both* the Sherman and Clayton Acts, the Columbia Steel Co. case charged violation of Sections 1 and 2 of the Sherman Act only. The narrow scope of the inquiry in that case appears from this brief statement of the issues with which the opinion begins:

> "The United States brings this suit under Sec. 4 of the Sherman Act to enjoin United States Steel Corporation and its subsidiaries from purchasing the assets of the largest independent steel fabricator on the West Coast on the ground that such acquisition would violate Sections 1 and 2 of the Sherman Act. The Complaint, filed on February 24, 1947, charged that if the contract of sale between United States Steel and Consolidated Steel Corporation were carried out, competition in the sale of rolled steel products and in fabricated steel products would be restrained, and that the contract indicated an effort on the part of United States Steel to attempt to monopolize the market in fabricated steel products. After a trial before a single judge in the district court, judgment was entered in favor of the defendants, and the government brought the case here by direct appeal. 32 Stat. 823, 15 U.S.C. Sec. 29" (12).

The position of the Government in the case was weakened by the fact that on June 17, 1946, the Attorney General of the United States had approved the sale by the War Assets Administration to the United States Steel Corporation, one of the defendants, of the plant which the Government had constructed, during the war, at Geneva, Utah. The negotiations for the sale of the Consolidated plant began prior to

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[12] Slip decision, *United States* v. *Columbia Steel Co.*, p. 1.

that sale. And the purpose of the Consolidated purchase was, as stated in the opinion, with evident approval:

> "to assure a market for plates and shapes produced at Geneva, and Roach testified that Consolidated's purpose was to withdraw the stockholders' equity from the fabrication business with its cyclical fluctuations at a time when a favorable price could be realized." (13)

In effect, the court rules that Consolidated's acquisition would not have any great effect on the market, in view of the fact that its requirements are "an insignificant fraction of the total market,—less than ½ of 1%." (14)

The court was also unable to foresee the probability of the continuance of even that limited market if the sale is not completed. Mr. Justice Reed said:

> "Whether we accept the government's or Consolidated's figures, however, they are of little value in determining the extent to which West Coast fabricators will purchase rolled steel products in the eastern market in the future since the construction of new plants at Geneva and Fontana and the creation of new basing points on the West Coast presumably give West Coast rolled steel producers a far larger share of the West Coast fabricating market than before the war." (15)

And, finally, the court stressed the fact that the future dealings between Consolidated and United States Steel would be mere incidents of ownership, not illegal *per se*, and would not transgress the provisions of the Sherman Act. As Mr. Justice Reed put it:

> "A subsidiary will in all probability deal only with its parent for goods the parent can furnish. *That fact, however, does not make the acquisition invalid.* When other elements of Sherman Act violations are present, the fact of corporate relationship is material and can

[13] Slip decision, page 10.
[14] Slip decision, page 11.
[15] Slip decision, page 13.

be considered in the determination of whether restraint or attempt to restrain exists. That this is the teaching of the Yellow Cab case is indicated by the following quotation:

> 'and so in this case, the common ownership and control of the various corporate appellees are impotent to liberate the alleged combination and conspiracy from the impact of the Act. The Complaint charges that the restraint of interstate trade was not only effected by the combination of the appellees but was the primary object of the combination. The theory of the complaint, to borrow language from United States *v.* Reading Co., 253 U. S. 26, 57, is that "dominating power" over the cab operating companies "was not obtained by normal expansion to meet the demands of a business growing as a result of superior and enterprising management, but by deliberate, calculated purchase for control." If that theory is borne out in this case by the evidence, coupled with proof of an undue restraint of interstate trade, a plain violation of the Act has occurred.' That view is in accord with previous decisions of the Court.

"The legality of the acquisition by United States Steel of a market outlet for its rolled steel through the purchase of the manufacturing facilities of Consolidated depends not merely upon the fact of that acquired control but also upon many other factors. Exclusive dealings for rolled steel between Consolidated and United States Steel, brought about by vertical integration or otherwise, are not illegal at any rate until the effect of such control is to unreasonably restrict the opportunities of competitors to market their product." (16)

The position of the Court was summed up in this language:

> "We conclude that the so-called vertical integration resulting from the acquisition of Consolidated *does not*

[16] Slip decision, pages 26-27. Emphasis added.

unreasonably restrict the opportunities of the competitor producers of rolled steel to market their product. We accept as the relevant competitive market the total demand for rolled steel products in the eleven-state area; over the past ten years Consolidated has accounted for only 3% of that demand, and if expectations as to the development of the western steel industry are realized, Consolidated's proportion may be expected to be lower than that figure in the future. *Nor can we find a specific intent* in the present case to accomplish an unreasonable restraint, for reasons which we discuss under heading III of this opinion." (17)

So, on the whole, it is evident that the decision in the Columbia Steel Co. case cannot be given the broad scope which the defendant claim for it. *It is canalized in the narrow channel which the facts in the case established.* The court did not have before it any established facts from which to determine the effect which such acquisition might have on future dealings with the acquired company in certain steel products. And there being no probability of restraining effect on interstate commerce, the court found no violation of the Sherman Act.

The minority opinion lends support to this view of the case. The majority declined to see violation in size resulting from permissible concentration of ownership. They required deleterious effects on commerce, in addition, before refusing sanction to the purchase. These they could not find or foresee. The minority, on the contrary, would have found violation in mere bigness.(18)

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[17] Slip decision, page 30. Emphasis added.

[18] The gist of the dissent is contained in this forceful statement:

"We have here the problem of bigness. Its lesson should by now have been burned into our memory by Brandeis. *The Curse of Bigness* shows how size can become a menace—both industrial and social. It can be an industrial menace because it creates gross inequalities against existing or putative competitors. It can be a social menace—because of its control of prices. Control of prices in the steel industry is powerful leverage on our economy. For the price of steel determines the price of hundreds of other articles. Our price level determines in large measure whether we have prosperity or de-

In the present case, as appears from the original opinion, we are dealing *not with probabilities but with actualities.* It was proved at the trial that the challenged practices have, *in fact*, already resulted in denying to the independent operators of stations *which are not owned by the defendants*, free dealing in certain commodities in interstate commerce and locking out Standard's competitors from these outlets. And, as there are no rights incident to ownership, of the type involved in the contemplated purchase of Con-

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pression—an economy of abundance or scarcity. Size in steel should therefor be jealously watched. In final analysis, size in steel is the measure of the power of a handful of men over our economy. That power can be utilized with lightning speed. It can be benign or it can be dangerous. The philosophy of the Sherman Act is that it should not exist. For all power tends to develop into a government in itself. Power that controls the economy should be in the hands of elected representatives of the people, not in the hands of an industrial oligarchy. Industrial power should be decentralized. It should be scattered into many hands so that the fortunes of the people will not be dependent on the whim or caprice, the political prejudices, the emotional stability of a few self-appointed men. The fact that they are not vicious men but respectable and social minded is irrelevant. That is the philosophy and the command of the Sherman Act. It is founded on a theory of hostility to the concentration in private hands of power so great that only a government of the people should have it."

Clearly, the minority, led by Mr. Justice Douglas, would stop large concentrations of ownership because they see in them the possibility of harm to the national economy through price-control and other harmful restrictions to freedom of commerce. The majority, led by Mr. Justice Reed, do not see in consolidation of economic power the unreasonable restraint condemned by the Sherman Act. (15 U.S.C.A., Secs. 1 and 2). To them, that Act does not denounce *bigness per se*, but only such control, large or small, as results, in fact, in the restrictive or monopolistic evils at which the anti-trust law is aimed.

Here, as is obvious from this and the original opinion, the injurious effect on interstate commerce of the restrictions has been shown to exist. More, the present action charges also violation of the Clayton Act (15 U.S.C.A. 14) which aims to stop monopolistic practices in their inception. Under it, a violation can be found if the practices *tend* to achieve the harm condemned by the statute, although such result has not yet been attained.

solidated Steel, the conclusions already announced must stand. The motion is denied.

Dated this 28th day of June, 1948.

LEON R. YANKWICH,
U. S. District Judge.

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IN THE

Supreme Court of the United States

October Term, 1948
No. 279

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal From the District Court of the United States for the Southern District of California.

BRIEF OF APPELLANTS, STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC.

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IN THE

Supreme Court of the United States

October Term, 1948

No. 279

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLANTS, STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC.

This is a direct appeal from a judgment of the District Court of the United States for the Southern District of California by Standard Oil Company of California and Standard Stations, Inc. They were defendants below.[1] They present the following brief to support their contention that such judgment should be reversed.

OPINION BELOW.

The opinion of the District Court [R. 99-140] is reported in 78 F. Supp. 850, and the supplemental opinion [R. 158-167] of the District Court is reported in 78 F. Supp. 875.

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[1]Herein appellee will sometimes be referred to as "plaintiff" and appellants as "defendants." References to pages of the record are designated: R. A page reference to an exhibit is followed by a reference to the page at which such exhibit was admitted in evidence. Italics throughout this brief have been supplied.

JURISDICTION.

The final judgment of the District Court against appellants was entered on June 30, 1948 [R. 188, 194]. Petition for appeal [R. 1866] was filed and allowed [R. 1876] on July 20, 1948. The jurisdiction of this Court is conferred by sec. 2 of the Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 58 Stat. 272, 15 U. S. C. 29),[2] and sec. 238 of the Judicial Code, as amended (36 Stat. 1157; 38 Stat. 804; 43 Stat. 938, 28 U. S. C. 345). Probable jurisdiction was noted on October 19, 1948 [R. 1947].

STATUTES INVOLVED.

The pertinent provisions of secs. 1 and 4 of the Act of July 2, 1890, as amended, commonly known as the Sherman Act, are as follows:

> Sec. 1. "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: . . ." (26 Stat. 209; 15 U. S. C. 1.)

> Sec. 4. "The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United

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[2] Effective September 1, 1948, subsequent to the allowance of the appeal herein, Sec. 2 of the Act of February 11, 1903 (15 U. S. C. 29) was amended by the new United States Code—Judiciary and Judicial Procedure, but such amendment established no change in the jurisdiction theretofore conferred by the Act of February 11, 1903. The new amendment, being Sec. 17 of an Act entitled "An act to revise, codify, and enact into law, title 28 of the United States Code entitled 'Judicial Code and Judiciary,'" reads: "In every civil action brought in any district court of the United States under any of said Acts, wherein the United States is complainant, an appeal from the final judgment of the district court will lie only to the Supreme Court."

States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. . . ." (26 Stat. 209; 15 U. S. C. 4.)

Secs. 3 and 15 of the Act of October 15, 1914, as amended, commonly known as the Clayton Act, are as follows:

Sec. 3. "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce." (38 Stat. 731; 15 U. S. C. 14.)

. . . . . .

Sec. 15. "The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. . . ." (38 Stat. 736; 15 U. S. C. 25.)

STATEMENT.

History of the Litigation.

The United States, on January 2, 1947, brought this suit under sec. 4 of the Sherman Act and sec. 15 of the Clayton Act to enjoin alleged violations of sec. 1 of the Sherman Act and sec. 3 of the Clayton Act [R. 1-12]. The complaint charged that Standard Oil Company of California (herein called "Standard"), and its wholly owned subsidiary, Standard Stations, Inc.,[3] had made certain written "exclusive supply" agreements and subleases (herein called "requirements" contracts) with numerous independent service station operators and garage operators in the Western area [R. 7].[4] These "requirements" contracts obligated Standard to sell to the dealer and the dealer to buy from Standard his requirements of petroleum products used or sold or bought to be used or sold by the dealer at a designated service station or garage, and certain but not all of these "requirements" contracts extended these obligations to tires, tubes and batteries [R. 7, 8, 171-178]. The complaint also charged that the companies entered into oral agreements with like obligations with certain service station and garage operators [R. 7].

The making of written "requirements" contracts was not denied. The existence of oral agreements was denied [R. 94].

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[3]Defendant, Standard Stations, Inc., since June 1, 1944, has confined its activities to the management and operation of Standard's company-operated service stations, known as "Standard Stations." [R. 1064.] These stations are not involved in this suit.

[4]Defined, in the complaint as the states of California, Oregon, Washington, Arizona, Nevada, Idaho, Utah and New Mexico. [R. 3.] It subsequently appeared that neither of the defendant companies made contracts or subleases with any one in New Mexico or marketed their products in that state. Therefore it was conceded during the trial that the "Western area" did not include New Mexico. [R. 201.]

The complaint charged that these contracts covering these products had the effect of eliminating competition between Standard and other producers and manufacturers of products of like utility and quality for the patronage of a substantial portion of the retail outlets for such products in the Western area, and deprived a substantial portion of such retail outlets of the opportunity of purchasing such products from producers and manufacturers of their own selection and at prices determined in free and open competition, and secured to Standard a monopoly of the patronage for such products in a substantial portion of such retail outlets, thereby "restraining and substantially lessening competition in the interstate trade and commerce in petroleum products and automotive accessories" [R. 10].

These allegations were denied by the answer [R. 95], and issue was joined upon plaintiff's contention that the "requirements" contracts unreasonably restrained and substantially lessened competition in interstate commerce [R. 88-95].

Issue was likewise joined upon defendants' affirmative defenses that the "requirements" contracts had long been employed by Standard's competitors; that the practice had arisen and been pursued because dealers required over a definite period a supply of these products to satisfy their requirements; that the "requirements" contracts were the outgrowth of competition; that Standard's competitors in the Western area were numerous and aggressive; and that but for the "requirements" contracts the competition of Standard for the trade of the dealers would have been eliminated [R. 95, 96].

No conspiracy or combination was charged.

No price fixing or price control or price discrimination, or attempt at anything of this sort, was charged.

No control over or interference with supply, or attempt at anything of this sort, was charged.

The cause was tried in the District Court during May, 1948.

On June 7, 1948 the District Court filed an opinion upholding the contentions of the government [R. 99-140]. Thereafter, before the making of findings or the entry of judgment, Standard moved the District Court to reopen the cause and hear further argument upon and reconsider its opinion in view of the decision of this Court on June 7, 1948 in *United States v. Columbia Steel Co.*, 334 U. S. 495 [R. 141-157]. Following argument, this motion for reconsideration was denied on June 28, 1948 [R. 168], and the District Court on that date filed a supplemental opinion [R. 158-167].

The District Court's findings of fact are set forth in 32 paragraphs [R. 168-185], and its conclusions of law in 10 paragraphs [R. 186, 187]. Error has been assigned to many of the District Court's conclusions, and to certain of its findings [R. 1867-1875]. While appellants have not challenged many of the District Court's findings as to specific facts, they believe that the significance of many of these can be determined only if weighed in relation to other undisputed facts which the findings and the District Court ignored. Error has been assigned to the failure to find the facts thus ignored [R. 1870-1872]. Error has also been assigned to the District Court's exclusion of certain evidence [R. 1872-1875].

In this statement of the case we invite attention to the following facts, some of which appear from the findings and all of which are established by uncontradicted evidence.

Standard's Refining and Distribution Facilities.

Standard, which is an integrated oil company engaged in production, transportation, refining and distribution [R. 169], has three refineries. All are located in California. One is on San Francisco Bay at Richmond; one is in the center of the state at Seguro near Bakersfield; and one is on the coast at El Segundo near Los Angeles [R. 182, 979, 1008, 975, 976].

The crude oil processed at these refineries comes solely from California oil wells [R. 223, 227].

Gasoline, lubricating oil and other products of the California refineries reach the service stations and other retail outlets either directly from the refinery by tank truck, where the truck haul is not too extended, or from bulk plants owned and operated by Standard [R. 182, 229, 230, 980-991, 1755, 1759, 975, 976], these bulk plants being supplied from the California refineries by ocean tanker, barge, railroad tank car, or tank truck [R. 182, 1755-1757, 975, 1759, 1760, 976].[5] At the service stations and other outlets these products are sold at retail to the motoring public.

Substantially all tires, tubes and batteries sold by Standard to retail dealer outlets in the Western area, are purchased by Standard at wholesale from factories and plants located in California [R. 230, 1051, 975, 976].

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[5]All of Standard's retail dealer outlets throughout the Western area receive their petroleum products in this way from Standard's California refineries except certain outlets in Utah and southeastern Idaho, which are supplied with gasoline obtained by Standard from a Salt Lake City refinery operated by Utah Oil Refining Company [R. 182, 992-994, 1755, 975], and outlets in the eastern part of Arizona, which are supplied with gasoline obtained by Standard from an El Paso refinery operated by Standard Oil Company of Texas. [R. 182, 995-996, 1755, 975.]

The other automobile accessories[6] sold by Standard to the outlets are purchased by Standard from various sources both within and without the Western area [R. 1048, 1049, 975, 976]. Bulk shipments of tires, tubes, batteries and other accessories are received at accessory warehouses maintained by Standard at Salt Lake City, Utah; Phoenix, Arizona; Portland, Oregon; Seattle and Spokane, Washington; and San Francisco, Los Angeles and Fresno, California [R. 183, 184]. At such warehouses these products are sorted and stored [R. 248, 249, 258, 1039, 1052]. Thereafter these products are shipped by common carrier from these warehouses to retail dealers to fill the dealers' orders [R. 183, 1052, 975, 976].

The tires and batteries and many of the other accessories bear the brand name "Atlas," and are purchased from Atlas Supply Company [R. 183]. Others bear other brand names [R. 1041, 1042, 975, 976, 1111].

Standard's Retail Dealer Outlets and Its "Requirements" Contracts.

Presently Standard is distributing petroleum products, tires, tubes, batteries and other automobile accessories through two distinct types of retail outlet.

Sales are made to the public at so-called "Standard Stations," operated by Standard's own employees [R. 1057]. Their uniform and distinctive color scheme is red, white and blue [R. 1057]. These sales are not involved in this suit [R. 7-10].[7]

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[6]Such articles as spark plugs, oil filters, fan belts, battery cables, fuses, windshield wipers and blades, tire repair and vulcanizing kits, anti-freeze preparations, tire chains, polishes, etc. [R. 1350-1360, 255, 282.]

[7]Sales of gasoline and other petroleum products are also made by Standard to industrial, commercial and agricultural accounts. [R. 1018, 975, 976.] These sales are not involved in this suit.

Sales are also made to independent dealers, most of whom are so-called "Chevron dealers."[8] These outlets are involved in this suit.

Although (as hereinafter noted) Standard has distributed generally through independent dealers since 1938, the dealers were not called "Chevron dealers" until 1945 [R. 1059].

Under this "Chevron dealer" system Standard paints the dealers' stations, following a distinctive and uniform pattern employing the colors cream, green and burgundy [R. 1059]. The dealer's name is featured prominently on the station [R. 1061]. In order to meet competition Standard in many cases installs certain equipment for these dealers, such as pumps, tanks, air compressors, air and water wells, hoists, buildings, canopies, rest rooms, lubricating oil equipment, drinking fountains, special lighting, paving and signs [R. 1084, 1085]. These dealers receive a special monetary allowance from Standard in consideration of their maintaining clean rest rooms [R. 1085, 1086].

To improve the service which these dealers offer the motoring public, Standard furnishes them the aid of a company employee, called a "dealer merchandiser," who trains the dealer. [R. 1103.]

Standard also furnishes these dealers with elaborate manuals of information and instruction prepared by the Company's organization, dealing with car lubrication for different makes and models of cars [R. 1086, 1087, 1099, 1822, 1100], the installation and repair of tires, tubes, batteries and other accessories [R. 1100, 1824, 1101], as well as selling methods, advertising, and the most efficient

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[8]Taking the name "Chevron" from Standard's trade-mark depicting a chevron. [R. 1779-1781, 1065.]

utilization of the service the Company offers the motoring public. [R. 1101, 1827, 1101.] Standard also furnishes these dealers with bookkeeping forms for the dealer's personal business accounting, periodical bulletins dealing with matters of current concern to the dealer's business, and numerous sales and advertising aids.[9] [R. 1102, 1103, 1104, 1848, 1102, 1858, 1104.]

On March 12, 1947 Standard was the owner or lessee and operator of 1063 company-operated Standard Stations in the Western area. [R. 1316, 212.]

On the same date Standard was also selling products to 5939 independent retail dealers. [R. 1315, 1316; 212.] With 742 of these Standard had no written agreement or lease of any kind and Standard did not own and was not the lessee of the property.[10] [R. 1316, 212.] In the case of the remaining 5197 dealers Standard had some form of contract or sublease with the dealer, and in 110 of such cases owned the property in fee, and in 3944 of such cases had leased the property from the owner thereof. [R. 1315, 212.][11] Not all of these 5197 dealers handle

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[9]Such as direct mail "follow-up" and forms used in connection with the lubrication of customers' cars; also (at low cost to the dealer) other direct mail material for publicizing the station, billheads, stationery, envelopes and calling cards; also mats and cuts for newspaper and handbill advertising; also travel maps and information to enable customers to plan vacation trips. [R. 1104, 1105.]

[10]The District Court found [R. 179] that Standard had "oral agreements" with these 742 dealers "pursuant to which the dealer agreed to handle and sell only the gasoline acquired from or sold to him by defendant Standard." While appellants contend that this finding is not supported by the evidence, this contention will not be argued upon this appeal since it is believed that the existence or non-existence of such "oral agreements" can have no bearing upon the result.

[11]Standard's capital investment in the land and equipment of *dealer* stations is approximately $16,500,000. [R. 1079, 1080.]

petroleum products, tires, tubes, batteries and automobile accessories purchased from Standard. For example, some handle Standard's gasoline only [R. 1074-1076], or Standard's lubricating oil only [R. 1074-1076], or Standard's petroleum products, but not tires, tubes, batteries or accessories sold by Standard. [R. 1074-1076, 1313, 212.]

Standard has not made contracts with dealers so as to have a concentration of dealers in any one locality in the Western area. [R. 1076, 1077.] Standard's 5197 dealer outlets under written contract are scattered throughout the area, which in its entirety embraces approximately 717,647 square miles. Illustrative of this absence of concentration are the Los Angeles basin and San Francisco bay areas—by far the most populous localities in the entire Western area.[12] In 1946 in the Los Angeles basin area there were 26 service stations for every dealer station handling Standard's gasoline [R. 1649, 910], and in the San Francisco bay area there were 13 service stations for every dealer station handling Standard's gasoline. [R. 1652, 910.]

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[12] The Los Angeles basin area includes Los Angeles, Alhambra, Pasadena, Glendale, Monrovia, Van Nuys, San Fernando, Newhall, Whittier, El Segundo, and other suburban communities. [R. 893, 894, 1650, 904, 1651, 904.] The San Francisco bay area includes San Francisco, part of Oakland, Berkeley, Piedmont, Albany, El Cerrito, Richmond, Sausalito, San Rafael and all cities on the peninsula south of San Francisco to and including Palo Alto. [R. 904, 911.]

The Los Angeles basin area is the largest retail gasoline market in the world. [R. 902.] By the 1940 census its population exceeded the population of either Oregon or Washington and exceeded the combined populations of Arizona, Nevada, Utah and Idaho. In 1946 there were more registered automobiles in Los Angeles County than in the states of Washington, Oregon, Nevada and Arizona combined. [R. 902.]

Standard's dealers do not occupy a substantial portion of the *favorably situated* retail outlets.[13] While a few of the company-operated Standard Stations are situated in localities where, because of municipal ordinances or regulations, it would be difficult for a competitor to obtain a new location, this is not true with respect to Standard's dealer stations. The latter are situated in localities where a competitor can obtain a comparable location. [R. 1081, 1082].

The contract with or sublease to the dealer contains the so-called "requirements" clause, which is attacked in this case. Involved in this attack are the Dealer Agreement [R. 1301, 211]; the Dealer Agreement TBA [R. 1308, 211]; the Petroleum Products and Equipment Agreement [R. 1305, 211]; and the Sublease [R. 1311, 211]. The government also attacks the Distributor Agreement [R. 1304A, 211], use of which preceded use of the Dealer

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[13] The complaint alleged that "since the number of service station sites which will return reasonable profits to their operators in any given area is limited, it is recognized that established operators of *favorably situated* service stations occupy positions of substantial impregnability against competitive invasion of their respective areas by other operators" [R. 4]; also that Standard's dealer outlets constitute a substantial portion of all of the "favorably situated" retail outlets in the Western area. [R. 6.]

No evidence whatever was offered by the government to prove these allegations.

At the trial the District Court directed discontinuance by defendants' counsel of inquiry along this line, in view of the government's failure to offer proof to support these allegations. During the introduction of evidence by defendants and with reference to an objection made by government counsel, the District Court said: "I think the inquiry should be discontinued here. I do not think it is material to the issues as they stand now. It may well be that Mr. Hall [defendants' counsel] prepared this testimony in view of some of the allegations of your complaint, such as, for instance, *that they monopolize corners*, but you have offered no testimony at all connected with geography, as well as to good corners or bad corners or anything else; so that that issue is not before the court." [R. 1082.]

Agreement TBA, and use of which has been discontinued since September 1944. [R. 171, 1314, 212.][14]

Typical of the so-called "requirements" clause attacked in this case, is the language of the Dealer Agreement providing that Standard "agrees to sell to" the dealer and the dealer "agrees to buy from" Standard "all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at" the dealer's specifically described retail outlet. [R. 1301, 211.] Substantially the same language appears in the Petroleum Products and Equipment Agreement [R. 1305, 211] and the Dealer Agreement TBA. [R. 1308, 211.] The latter contains the further provision that Standard "agrees to sell or consign to" the dealer and the dealer "agrees to purchase or receive from" Standard "and stock and offer for sale, all Dealer's requirements of tires, tubes, and batteries used or sold or bought to be used or sold by Dealer on said premises . . . . Company will deliver to Dealer such other merchandise currently sold by Company that Dealer wishes to handle hereunder, in quantities necessary in opinion of Company to meet Dealer's requirements at said premises." [R. 1308, 211.][15]

The Dealer Agreement [R. 1302, 211], the Dealer Agreement TBA [R. 1310, 211], and the Distributor Agreement [R. 1304A, 211] are by their terms terminable by either party on 30 days notice at the end of the first

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[14] As Distributor Agreements expire they are being replaced by the Dealer Agreement TBA. Thus on Mar. 12, 1947, there were 556 Distributor Agreements outstanding in the Western area. At the time of the trial there were only 232. [R. 1314, 212.]

[15] The Distributor Agreement, now superseded, contained substantially the same "requirements" clause as the Dealer Agreement TBA, but with this additional sentence: "Distributor agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the station." [R. 1304A, 211.]

6 months or at the end of any 6 months period thereafter.

On March 12, 1947 there were outstanding 1800 Subleases, 1656 Dealer Agreements, 2221 Dealer Agreements TBA, 912 Petroleum Products and Equipment Agreements, and 556 Distributor Agreements. [R. 1313, 1314, 212.] In many cases a single dealer executed two or more of these documents.

Standard's Long-continued Use of "Requirements" Contracts.

As early as 1931 Standard was distributing its petroleum products through agents under leases and agency agreements [R. 170, 171], such leases and agency agreements in numerous instances providing that the agent would handle only Standard's petroleum products. [R. 171.] Use of the Distributor Agreement (later superseded by the Dealer Agreement TBA) began about 1934 [R. 171, 286, 1070], but the agency method of distribution was not superseded until 1938. [R. 171.]

In 1938 Dealer Agreements containing the "requirements" clause came into use, and a dealer system superseded an agency system. [R. 171, 286, 1070.][16]

In 1944 and thereafter the Dealer Agreement TBA containing the "requirements" clause was used in place of the Distributor Agreement. [R. 171, 1314, 212, 287, 1070.] In 1944 the Petroleum Products and Equipment Agreement containing the "requirements" clause also came into use. [R. 171, 287, 1071.]

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[16]Various printings of these Dealer Agreements in 1938, 1940, 1941, 1942, 1943 and 1944 all contain the so-called "requirements" clause. [R. 1788-1821, 1070.]

Thus, Standard has continuously employed the "requirements" clause in contractual relations with independent dealers since 1938.

Standard's Sales to Dealers Without a "Requirements" Contract.

A dealer desiring to handle Standard's products (other than tires, tubes and batteries) may obtain them from Standard without entering into any written contract.

Standard will and does sell a dealer gasoline without a contract of any kind [R. 1074, 1316, 212], even where the dealer is selling the petroleum products (other than gasoline), or the tires, tubes or batteries of one of Standard's competitors. [R. 1074.] Standard will and does sell a dealer lubricating oil without a contract of any kind, even where the dealer is selling the gasoline or the tires, tubes, or batteries of one of Standard's competitors. [R. 1074, 1075.]

The foregoing has been Standard's practice for a number of years. [R. 1075.]

Standard will sell automobile accessories (other than tires, tubes and batteries) to a dealer without a contract of any kind, even where the dealer is selling the petroleum products (other than gasoline) or the tires, tubes or batteries of one of Standard's competitors. [R. 1076.]

Standard will not sell a dealer its gasoline if such dealer also handles gasoline purchased from someone else. [R. 242, 269, 1127.] This is and has been for years the almost universal practice of all gasoline suppliers in the Western area. A service station handling the gasoline of more than one supplier is known as a "split-pump" station. [R. 265.] Out of 36,500 retail outlets in the Western area in 1948 only 577 outlets, or 1.6% of the

total, were "split-pump" outlets. [R. 1062, 1763-1777, 1064.] At the time of the trial Standard's six largest competitors were serving only 119 "split-pump" accounts. [R. 1547, 856, 1537, 867, 1566-1568B, 874, 1590, 879, 1610, 882, 1619, 887.]

Standard discontinued sales to "split-pump" stations about 1938 or 1939. [R. 269.] A "primary reason" for this was the danger of substitution. [R. 1106.] Experience had demonstrated the danger of what is called "long-hosing" by the dealer, *i. e.*, the furnishing of a brand of gasoline not requested by the customer by means of a long hose from a pump adjacent to the pump from which the customer believed he would be served when he stopped his car at the "pump block." [R. 1106, 1107.] There is also a danger of substitution in the sale of lubricating oil if more than one supplier's brand is carried by the dealer. [R. 1107.] Other reasons prompting a discontinuance of "split-pump" stations, were the dealers' preference for handling the products of a single supplier [R. 266], and a higher delivery cost in the case of "split-pump" stations. [R. 266.] By 1938 or 1939 "split-pump" stations were in "process of eliminating themselves" because "dealers generally did not want to merchandise in that manner." [R. 269.][17]

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[17]E. J. McClanahan, Standard's vice-president in charge of marketing, testified that prior to 1938 or 1939 Standard served "split-pump" accounts. [R. 269.]. About that time "split-pump" accounts were in "process of eliminating themselves." [R. 269.] Dealers "generally did not want to merchandise in that manner. It was not a sound policy for them." [R. 269.] The "dealers themselves are not favorable to dividing their interests with suppliers, for two basic fundamental reasons: They haven't the merchandising support from the supplier like they would have if that supplier knew that they were constantly selling his product; and secondly, they haven't an assurance of supply. There is no obli-

Standard will not sell tires, tubes, or batteries to a dealer unless the dealer will sign a Dealer Agreement TBA. [R. 1075.]

Standard will not sell automobile accessories (other than tires, tubes and batteries) to a dealer unless such dealer sells Standard's gasoline. [R. 1075, 1076.]

A dealer desiring to buy Standard's petroleum products may freely elect to execute either a Dealer Agreement, or a Dealer Agreement TBA. If he elects to execute the

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gation on the part of the supplier to continue supplying a split pump account such as there is on a long-term, secured tenure arrangement with what we call a 100 per cent account." [R. 266.] Illustrative of what he meant by lack of "merchandising support" in the case of a "split-pump" account, Mr. McClanahan testified that such an account "carries what we term a neutral color scheme and his place of business is not identifiable by the mobile buying public such as it would be if he represented the advertised products of a supplier. It is difficult for a buyer to single out the particular product that he wants. That is one phase of it." [R. 267.]

"Split-pump" accounts were also objectionable from the standpoint of the company. . . .

Mr. McClanahan testified that "experience has proven that they ["split-pump" accounts] tend to misrepresent the products to the trade. Oftentimes they sell a gasoline out of one pump that the customer may think he is buying from another, creating what we call substitution. We have known of many instances where they have transferred the products from an underground tank to another tank, where it is sold under another brand, because of some temporary compensation that they might get from that particular supplier." [R. 266.] ". . . we have had accounts, where we have had the trademark and the color in the pump, and the account has sold gasoline from that pump for six months, and we haven't delivered a gallon of gasoline to the dealer in six months, but the meters on that pump showed a tremendous output." [R. 273.]

E. D. Thompson, Standard's manager of dealer sales, testified that the "primary reason" Standard ceased selling gasoline to

Dealer Agreement, he will be obligated to buy his petroleum products "requirements" for a specified station from Standard, but is contractually free to and in many cases does purchase his tires, tubes, batteries and accessories from a competitor of Standard. [R. 1075, 1313, 212, 1301-1303, 211.] The same thing is true with respect to a dealer who elects to execute a Petroleum Products and Equipment Agreement, but not a Dealer Agreement TBA. [R. 1076, 1313, 212, 1305-1307, 211.]

"'split-pump' accounts was because of the danger of "substitution"; that "split-pump" accounts substituted competitive products for Standard's products, "in many instances making such sales on the company's credit cards." The pumps generally "would be on a single pump block, and a customer attracted to the station—if our colors and signs were displayed, a customer desiring our products would be attracted to the station, and in pulling up to the pump block would naturally expect to receive the product that was generally identified in that unit, and it was very eas for the dealer to take the hose from some other pump, and without being observed by the motorist put the gasoline in the tank." [R. 1106, 1107.] This practice was called "long-hosing," *i.e.*, the dealer "usually had a pretty long hose on the gasoline" he "chose to push" and "could reach almost any pump block area with a hose from this pump." [R. 1107.]

Mr. Thompson also testified that in the case of "split-pump" stations there was "danger of substitution in the case of lubricating oil." [R. 1107.]

Mr. McClanahan also testified that it cost "on an average from a cent to a cent and a half a gallon more to serve a split-pump account" because of "the uncertainties of deliveries, the uncertainty of quantities and the constant sales followup that is required to maintain representation with that account." [R. 266.]

A graph which is in evidence [R. 1862, 1139] confirms this. It shows that the cost of delivering gasoline to a service station rises disproportionately as the size of the individual delivery diminishes.

A dealer who executes a Dealer Agreement TBA is under no obligation to buy from Standard his requirements of accessories other than tires, tubes and batteries.[18]

Standard's Powerful and Aggressive Competitors in the Western Area.

Standard's largest oil competitors in the Western area are Shell Oil Company, Incorporated, Tide Water Associated Oil Company, General Petroleum Corporation, The Texas Company, Union Oil Company of California, and

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[18]Paragraph 2 of the Dealer Agreement TBA, after referring to tires, tubes and batteries, reads:

> "Company will deliver to Dealer such other merchandise currently sold by Company *that Dealer wishes to handle hereunder*, in quantities necessary in opinion of Company to meet Dealer's requirements at said premises." [R. 1308, 211.]

This is the only sentence in any of the agreements or in the sublease which can be deemed to include automotive accessories other than tires, tubes and batteries.

The italicized words leave it entirely optional with the dealer whether he will buy automotive accessories, other than tires, tubes and batteries, from Standard at all or to any extent. If he does not "*wish*" to handle such merchandise, he is under no obligation to do so. *He does not agree to buy any of this merchandise from Standard. He does not agree that he will not buy this type of merchandise from one of Standard's competitors.* If he elects to buy this type of merchandise from Standard, the last part of the sentence ("in quantities necessary in the opinion of the Company to meet Dealer's requirements at said premises") is designed to protect Standard against demands by the dealer for quantities in excess of those which Standard can currently supply, and in practice this has been the way this clause has been interpreted. [R. 1071, 1072.]

A dealer under a Dealer Agreement TBA (or for that matter under any other form of "requirements" contract) *is always free to handle the accessories, other than tires, tubes and batteries, of Standard's competitors.* [R. 1076.]

Richfield Oil Corporation. In 1946 their petroleum products, tires, tubes, batteries and accessories, competitive with Standard, were distributed throughout the Western area through 20,502 dealer outlets[19] and 383 company-operated outlets [R. 1517, 856, 1535, 867, 1566-1568B, 874, 1618A, 885, 1589, 879, 1619 887]. In the same year these six competitor companies sold through such outlets approximately 1,709,874,556 gallons of gasoline and approximately 33,989,666 gallons of lubricating oil [R. 1517, 856, 1536A, 867, 1566-1568B, 874, 1589, 1590, 879, 1618B, 1618C, 885, 1620, 1621, 887]. In that year Standard sold through independent retail dealers 268,568,000 gallons of gasoline and 6,067,782 gallons of lubricating oil [R. 1656, 1660, 939].

Standard has many other competitors in the Western area selling their products through service station outlets. As above noted, the six companies referred to distribute their products through 20,502 dealer outlets and 383 company-operated outlets. Standard distributes its products through 5039 dealer outlets and 1063 company-operated stations [R. 1315, 1316, 212]. Thus Standard and its six largest competitors distribute through 27,887 outlets. However, early in 1947 the total number of retail gasoline outlets in the entire Western area, including company-operated stations, was approximately 36,500 [R. 1061, 1763-1777, 1064]. According to the 1946 gasoline tax statistics there were 80 companies operating in one or more of the states of the Western area, each of

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[19]Of these Shell had 4202 [R. 1535, 867]; General Petroleum 3915 [R. 1566-1568B, 874]; Texas 3842 [R. 1589, 879]; Union 3389 [R. 1618A, 885]; Associated 2621 [R. 1517, 856]; and Richfield 2533 [R. 1619, 887].

which had annual taxable gasoline sales of more than 1,000,000 gallons of gasoline [R. 1675, 1676, 939]. In 1946 in the Los Angeles basin area alone companies other than Standard and the six companies named above supplied gasoline to 2919 service stations, and in the San Francisco bay area alone to 551 service stations [R. 1649, 1652, 910].

Standard's competitors named above sell their own brands of *lubricating oil* through the dealer stations handling their gasoline [R. 857, 865, 872, 877, 880, 881, 886, 1069]. Additionally, there are a number of other brands of lubricating oil sold to a multitude of retail outlets throughout the Western area in competition with the products of Standard and the companies named above —such brands as "Pennzoil," "Quaker State," "Hyvis," "Conoco," "Kendall," "Macmillan," "Wolf's Head," "Mohawk Penn," "Wilshire," and "Phillips." [R. 317, 318, 335, 336, 454, 455, 478, 479.] In 1946, in addition to the competitor companies named above, there were 62 competitor companies marketing their own brands of lubricating oil in one or more of the states of the Western area [R. 1864, 1865, 1148]. Some of these competing brands of lubricating oil were sold in large volume through a multitude of retail outlets.[20]

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[20]For example, *Pennzoil*, selling in 1916 in the Western area through probably less than 2,000 retail outlets, was selling in 1946 in that area through between 8,000 and 12,000 retail outlets, according to the testimony of its president, called as a government witness. [R. 375, 376.] According to another government witness, *Macmillan* in 1947 was selling in that area to approximately 9,000 to 10,000 accounts—a greater number of accounts than in 1946. [R. 324.] In Los Angeles County and the fourteen counties surrounding Sacramento, *Quaker State* was sold through 4,000 to 5,000 retail outlets [R. 464] according to the testimony of its vice-president, also a government witness.

Numerous companies likewise sell their *tires, tubes and batteries* through numerous retail outlets in the Western area.[21] "Pennsylvania," "Goodyear," "Firestone," "Fisk," "Mohawk," "United States," "General," "Gates," "Federal," "Mobile," "Armstrong," "Kelly Springfield," "Dayton," "Miller," "Montgomery Ward," and "Sears Roebuck" are some of the brands of tires competing in that area with Standard's "Atlas" brand of tires. [R. 514, 515, 550, 551, 552, 554, 555, 567, 577, 578.] "Auto-Lite," "Hobbs," "Mobil," "Signal," "States," "Olympic," "Dunlop," "Exide," "Goodrich," "Goodyear," and "Firestone" are some of the brands of batteries competing with Standard's "Atlas" batteries. [R. 627, 630, 633.] These lists are by no means complete; for there was uncontradicted testimony of a recent "check" which disclosed that companies competing with Standard in the sale of gasoline through retail dealers were promoting 27 lines of tires and 28 lines of batteries. [R. 1069.] Of course tires and batteries, as distinguished from gasoline and lubricating oil which are retailed chiefly through service stations and garages, are sold at retail at many outlets other than service stations and garages.

The other oil companies compete with Standard for the patronage of the dealer. They employ the same methods as Standard to induce the dealer to buy from

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[21] A government witness who was a Los Angeles wholesale dealer in tires and batteries testified that in 1947 he sold products competing with "Atlas" products to approximately 7,000 service stations and garages in the Western area, this being double the number of outlets which had purchased from him the year before. [R. 577, 581.] Another Los Angeles distributor of tires and batteries other than "Atlas," also a government witness, testified that in 1946 he did a business of close to $1,500,000 in California, Nevada and Arizona, and that in 1947 this figure was a little higher. [R. 591, 592, 595.]

them.[22] The dealer contracts and sublease arrangements of Standard's principal competitors are in general similar to those of Standard.[23] [R. 1518, 1524, 859, 1538, 1554, 867, 1569, 1578, 874, 1590, 1603, 879, 1611, 1615, 882, 1621, 887.]

Standard's Percentage of the Total Business.

Gasoline.

Standard's gasoline is sold to the motoring public (a) through its company-operated stations, known as "Standard Stations," and (b) through independent dealers. [R.

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[22]The uncontradicted evidence showed that other companies compete "very aggressively" with Standard in the sale of petroleum products, tires, tubes, batteries and accessories [R. 1065]; that they compete with Standard for the purpose of obtaining sites for service stations [R. 1065], also for the purpose of taking over the patronage of existing dealers [R. 1067]; and that they offer dealers inducements for "the purpose of getting one of . . . Standard's dealers." [R. 1068.]

[23]*Shell* for 10 years or more [R. 866] has used a "100% Dealer Gasoline Contract" and a "100% Dealer Gasoline Contract and Paint, Work and Sign Agreement" obligating Shell to sell to the dealer and the dealer to buy from Shell "all gasoline and motor fuel" which the dealer "may require for resale at" the dealer's premises situated at a specified location, and providing that the dealer "shall not store or sell . . . any gasoline on or from said premises . . . except as acquired from Shell." [R. 1544, 1547, 867.] For a like period [R. 866] Shell has also used a "Shellubrication Dealer's License Agreement" providing that Shell grants to the dealer the right to use "Shellubrication" at a specified location, and the dealer "agrees to use, advertise and display only lubricating oils and greases obtained from Shell in connection with the performance of 'Shellubrication' service" and "to keep on hand at all times and to display a representative stock of automotive lubricants acquired from Shell. . . ." [R. 1538C, 867.] For a like period [R. 866] Shell has also used a "Loaned Equipment Agreement" by which Shell agrees to loan the dealer certain equipment and the dealer agrees "not to permit said equipment to be used in any manner except for the storage and sale of petroleum products purchased from Shell." [R. 1542, 867.]

Associated for 10 years [R. 859] has used a "Dealer Sales Agreement" and a "Petroleum Products Sales Agreement" obligat-

1057, 1058.] We will call the former "Standard Stations sales," and the latter "dealer sales." It also sells gasoline, as well as other petroleum products, (c) directly to large industrial, commercial and agricultural users. [R. 1018, 975, 976.] We will refer to these as "industrial sales." The Standard Stations sales and industrial sales are not involved in this suit.[24]

What are the total sales in the Western area by all suppliers with which Standard's dealer sales of *gasoline* are to be compared?

The available figures [R. 1116, 1117] which are accurately informative are those published by the tax authorities of the several states showing taxable gasoline gallon-

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ing Associated to sell and deliver to the dealer and the dealer to purchase from Associated all petroleum products "required by Buyer . . . for resale from Buyer's premises" at a specified location. [R. 1527, 1529, 859.] Associated has also used for about 7 years [R. 859] a "Merchandise Agreement" which obligates Associated to sell and deliver to the dealer and the dealer to purchase from Associated "all tires, tubes, batteries and accessories and/or auto supplies required by Buyer for resale" at a specified station. [R. 1524, 859.]

General Petroleum for "probably 6 or 7 or 8 years" [R. 873] has used a Dealer Gasoline Contract obligating the company to sell and deliver to the dealer and the dealer to purchase from the company the "Dealer's ordinary trade requirements of gasoline for resale" at a specified service station location. [R. 1578, 874.]

Union, Richfield and *Texas* have used contracts providing for the sale to and purchase by the dealer of not less than a stated "minimum" quantity and not to exceed a stated "maximum" quantity of petroleum products for resale over a specified period. [R. 1615, 882, 1621, 887, 1590, 1597, 879.] *Richfield* also uses [R. 887] an Operator's Sales Contract which obligates Richfield to sell to the dealer, and the dealer to buy from Richfield the dealer's "entire requirements" of gasoline, lubricating oils and greases "for resale" during a stated period from a specified service station, but not less than a stated monthly minimum quantity. [R. 1643, 887.]

[24]The issues framed by the pleadings relate solely to "supply contracts" with the "independent service station operators" and "garage operators." [R. 7.]

age: [R. 928-932.] These figures are in evidence. [R. 1653, 939.] These figures which we will refer to as "taxable gallonage," include not only gasoline sold through service stations and other retail outlets, but also what we have referred to as industrial sales. [R. 931, 946, 1116, 1117.]

In the Western area in 1946:

Standard's *dealer sales* of gasoline were 6.7% of the total taxable gallonage. [R. 1656, 939.]

Standard's "*Standard Stations*" *sales* of gasoline (not involved in this suit) were 6.8% of the total taxable gallonage. [R. 1656, 939.]

Standard's *dealer sales plus Standard Stations sales* of gasoline were, therefore, 13.5% of the total taxable gallonage.

Standard's *dealer sales plus Standard Stations sales plus industrial sales* of gasoline (the last two not being involved in this suit) were approximately 23%[25] of the total taxable gallonage.

The District Court found that "Standard sells between 12 and 14 per cent of all the gasoline sold or distributed through independent retail dealer outlets in the Western area." [R. 182.] This finding compares Standard's dealer sales *plus Standard Stations sales* with total sales

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[25]The District Court found [R. 182]: "Standard sold approximately 23 per cent of all the gasoline sold in the Western area during the year 1946." This finding was based *solely* on the testimony of E. J. McClanahan, Standard's vice president, in charge of marketing. His testimony makes it perfectly clear that this 23% estimate included gasoline sold by Standard not only through dealers, but also Standard Stations sales and industrial sales of gasoline. Mr. McClanahan said that this 23% represented "*all* gasoline sold . . . *to all classes of trade.*" [R. 222.]

through independent dealer retail outlets.[26] Since Standard's dealer sales in 1946 were approximately 50% of its dealer sales plus Standard Stations sales, this amounts to a finding that Standard's dealer sales (the sales involved in this suit) are between 6 and 7 per cent of all gasoline distributed through independent retail dealer outlets.

This finding was based on testimony [R. 223, 1116] which was an estimate. It was necessarily an estimate, because no one knows exactly what percentage of the total taxable gallonage is represented by gasoline which moves *through dealer outlets only*. [R. 1116, 1117.]

Therefore, in referring herein to Standard's percentage of the gasoline dealer business we shall refer to the percentage established by the uncontroverted statistics in evidence, *i. e.*, the percentage of the total taxable gasoline gallonage represented by Standard's *dealer sales* (the sales involved in this suit), which was 6.7%.[27]

Lubricating Oil

What are the total sales in the Western area by all suppliers with which Standard's dealer sales of *lubricating oil* are to be compared?

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[26]This finding was based *solely* on the testimony of E. J. McClanahan, Standard's vice president, in charge of marketing, and the testimony of E. D. Thompson, Standard's manager of dealer sales. An inspection of their testimony clearly shows that they included not only dealer sales, but also Standard Stations sales of gasoline in this estimate of "between 12 and 14 per cent." [R. 223, 1116.]

This was evidently the interpretation of Mr. Dixon, who was in charge of the government's case at the trial. In final argument he said: "If there is any question about that, I submit it is put to rest by the testimony of Mr. McClanahan . . . where he estimated that percentagewise his company had between 12 and 14 per cent *of the total retail sales* of petroleum products in the Western area. . . ." [R. 1173.]

[27]Standard Stations sales of gasoline in that year were 6.8% of the total taxable gallonage. [R. 1656, 939.]

The available figures which are accurately informative are the lubricating oil sales figures published by the American Petroleum Institute's Economics Division. [R. 933.] These figures are in evidence. [R. 1657, 939.]

Standard's *dealer sales* in 1946 of *lubricating oil* in the Western area were 5% of such total taxable lubricating oil sales in that area. [R. 1660, 939.][28]

Tires.

What are the total sales in the Western area by all suppliers with which Standard's dealer sales of *tires* are to be compared?

The available figures which are accurately informative are those showing total replacement[29] tire shipments published by the Rubber Manufacturers' Association. [R. 934.] These figures are in evidence. [R. 1661, 939.]

Standard's *dealer sales* in 1946 of *tires* in the Western area were 2% of such total replacement tire shipments in that area. [R. 1664, 939.][30]

Batteries.

What are the total sales in the Western area by all suppliers with which Standard's dealer sales of batteries are to be compared?

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[28] Standard Stations sales of lubricating oil in that year were 3.8% of such total. [R. 1660, 939.]

[29] "*Replacement*" figures are used so as to exclude tires and batteries first installed on new cars at the time the latter are assembled at the factory. Nationwide figures are broken down for the states of the Western area on the basis of motor vehicle registrations. [R. 934.]

[30] Standard Stations sales of tires in that year were 1.9% of such total. [R. 1664, 939.]

The available figures which are accurately informative are those showing total battery replacements published by the Association of American Battery Manufacturers (1933 to 1938) and Dun & Bradstreet, Inc. (1939 to 1946). [R. 935.] These figures are in evidence. [R. 1665, 939.]

Standard's *dealer sales* in 1946 of *batteries* in the Western area were 1.8% of such total battery replacements in that area. [R. 1668, 939.][31]

Standard's Failure to Increase Its Percentage of the Total Business During the Long Period the "Requirements" Contracts Have Been in Use.

There has been no lessening of competition during the years that the "requirements" contracts have been used. During that period Standard no more than maintained its relative position as a wholesaler among its competitors and in the case of lubricating oil actually lost ground to its competitors.

Standard in 1938 and 1939 had about 8500 retail dealer outlets in the Western area. [R. 238.] In 1947 Standard had only 5939 such outlets. Of the latter 5197 had contracts or subleases with "requirements" clauses. [R. 1315, 1316, 212.]

Standard has continuously followed the policy of contracting with the fewest possible retail dealers consistent with a coverage of the area to be served. [R. 1076,

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[31]Standard Stations sales of batteries in that year were 2.8% of such total. [R. 1668, 939.]

1077.][32] The result is pointedly illustrated by the conditions prevailing in 1946 in the populous Los Angeles basin area and San Francisco bay area. In the Los Angeles basin area Standard's dealer stations were 3.68% of the total service stations and its gasoline sales to such dealer stations were 2.43% of the total gasoline gallonage distributed through all stations in such area. [R. 1649, 910.] In the San Francisco bay area Standard's dealer stations were 6.98% of the total service stations and its gasoline sales to such dealer stations were 5.52% of the total gasoline gallonage distributed through all stations in such area.[33] [R. 1652, 910.]

To show Standard's position in relation to its competitors *from year to year over a period during which the "requirements" contracts were in use*, Standard introduced

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[32]From 1931 to 1941 Standard constructed 8% of the new retail outlets that were constructed by all companies. From 1942 to 1947 it constructed 8.7% of such new outlets. [R. 1079.] In the populous Long Beach (California) district on July 15, 1947, Standard had no service stations under construction and its competitors were constructing 48 service stations. [R. 1785, 1066, 1067.]

There was uncontradicted testimony that Standard sought to avoid contracting with many outlets in a given area, because such concentration would result in higher distribution costs. [R. 1077.]

[33]The smaller competitor companies (*i.e.* companies *other than* Standard, General Petroleum, Texas, Union, Associated, Shell and Richfield) had 47.15% of the service stations and supplied 43.60% of the gasoline gallonage to service stations in the Los Angeles basin area, and had 28.49% of the service stations and supplied 23.94% of the gasoline gallonage to service stations in the San Francisco bay area. [R. 1649, 1652, 910.]

In the Los Angeles basin area Standard's company-operated stations (Standard Stations) were 4.70% of the total service stations and its gasoline sales through such company-operated stations were 8.71% of the total gasoline gallonage distributed through all stations in such area. [R. 1649, 910.] In the San Francisco bay area Standard's company operated stations were 8.43% of the total service stations and its gasoline sales through such company-operated stations were 14.17% of the total gasoline gallonage distributed through all stations in such area. [R. 1652, 910.]

in evidence statistics and graphs [R. 1653-1673, 939] showing Standard's retail dealer sales as compared with total industry sales in the Western area of motor gasoline, lubricating oil, tires and batteries. These show that Standard's dealer sales in the Western area were a *percentage* of industry total sales as shown below:

	(1)[34] Gasoline (%)	(2)[35] Lubricating Oil (%)	(3)[36] Tires (%)	(4)[37] Batteries (%)
1931	7.6			
1932	6.7			
1933	6.4		.1	
1934	7.1		.3	0.3
1935	6.4		.6	0.6
1936	6.9	6.2	.9	0.9
1937	6.1	6.1	1.3	1.3
1938	6.7	6.0	1.4	1.4
1939	6.6	6.5	1.2	1.6
1940	6.1	6.8	1.3	1.7
1941	6.5	6.0	1.2	1.8
1942	6.5	5.0	.6	1.9
1943	5.5	5.9	1.5	1.9
1944	5.1	4.2	1.5	2.0
1945	5.7	4.1	1.6	1.9
1946	6.7	5.0	1.3	1.8

[34]Column (1) shows the percentage which Standard's retail dealer sales of gasoline bear to all taxable gasoline sales. The latter figures are published by the tax authorities of the several states [R. 1656, 939, 928-932], and include not only gasoline sold through retail dealer outlets, but gasoline sold to industrial, commercial and agricultural users. [R. 931, 946, 1116, 1117.] However, the witness Dern testified without contradiction that the total of taxable gasoline sales rises and falls *in the same proportion* as the total of retail sales of gasoline. [R. 931, 946.] Therefore, to determine whether Standard's competitive position has improved or deteriorated over a period of years, it is proper to compare its retail dealer sales with these taxable sales.

Over the years Standard's dealer sales increased, but so did the volume of sales in the industry generally. Market demand in Western area increased tremendously.

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[35]Column (2) shows the percentage which Standard's retail dealer sales of lubricating oil bear to total taxable lubricating oil sales. The latter figures are published by the American Petroleum Institute's Economics Division. [R. 1660, 939, 933.]

[36]Column (3) shows the percentage which Standard's retail dealer sales of tires bear to total tire replacement shipments, according to figures published by the Rubber Manufacturers Association, the latter being broken down for the states of the Western area on the basis of motor vehicle registrations in such states. [R. 1664, 939, 934.]

[37]Column (4) shows the percentage which Standard's retail dealer sales of batteries bear to total battery replacements, according to figures published by the Association of American Battery Manufacturers (1933 to 1938) and Dun & Bradstreet, Inc. (1939 to 1946), such figures being broken down for the states of the Western area on the basis of motor vehicle registration in such states. [R. 1668, 939, 935.]

The following percentages show the relation between Standard Stations sales (*i.e.* sales through the company-operated stations) in the Western area and total industry sales in that area of motor gasoline, lubricating oil, tires and batteries during such period. [R. 1656, 939, 1660, 939, 1664, 939, 1668, 939.]

	Gasoline (%)	Lubricating Oil (%)	Tires (%)	Batteries (%)
1931	3.8			
1932	4.7			
1933	4.7		3.5	
1934	5.2		4.0	2.0
1935	4.8		3.8	2.1
1936	4.4	3.0	3.8	2.1
1937	4.5	3.1	3.6	2.4
1938	4.7	3.3	3.7	2.4
1939	4.8	3.5	3.3	2.4
1940	4.9	3.5	3.5	2.3
1941	5.3	3.7	3.1	2.5
1942	5.4	3.5	.7	2.9
1943	4.3	2.8	2.7	2.0
1944	3.4	2.4	1.5	1.7
1945	4.5	2.6	1.6	1.8
1946	6.8	3.8	2.2	2.8

Total taxable *gasoline* sales in 1936 in the Western area were 2,442,319,000 gals. By 1946 such sales were 4,023,342,000 gals. [R. 1656, 939.] Assuming a price of 18¢ per gal.,[38] the dollar volume of these sales in 1946 would be $724,201,560.00.[39]

Total *lubricating oil* sales in 1936 in the Western area were 59,704,600 gals. By 1946 such sales were 122,281,383 gals. [R. 1660, 939.] Assuming a price of 50¢ per gal.,[40] the dollar volume of these sales in 1946 would be $61,140,691.00.[41]

Standard's increase in dealer sales of gasoline and lubricating oil was proportionately less than the increase in the total sales in the industry in the Western area.

Comparing 1936 with 1946 Standard's increase in dealer sales of *gasoline* was 58%. [R. 1656, 939.] As shown above, sales in the industry increased 64%. [R. 1656, 939.] Comparing 1936 with 1946, Standard's increase in dealer sales of *lubricating oil* was 62%. [R. 1660, 939.] As shown above, sales in the industry increased 104. [R. 1660, 939.]

Moreover, Standard's increase was not nearly as great as the increase in volume of dealer sales of certain of its competitors. Thus, comparing 1941 with 1946 Standard's increase in dealer sales of *gasoline* was 26% [R.

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[38]This was an assumption employed by the government in arriving at the dollar volume of Standard's gasoline sales for 1946. [R. 820.]

[39]Standard's dollar volume in that year was found to be $48,342,374.62. [R. 180.]

[40]This was the price at which the government assumed that Standard sold its RPM lubricating oil to dealers in 1946. [R. 821.]

[41]Standard's dollar volume in that year was found to be $3,246,263.83. [R. 180.]

1656, 939], whereas over the same period, Union's increase was 90% [R. 1618B, 885]; General Petroleum's increase was 165% [R. 1566-1568B, 874]; and Associated's increase was 34%. [R. 1516, 1517, 856.] Comparing 1941 with 1946, Standard's increase in dealer sales of *lubricating oil* was 43% [R. 1660, 939], whereas over the same period Union's increase was 98% [R. 1618C, 885]; General Petroleum's increase was 174% [R. 1566-1568B, 874]; and Associated's increase was 55%. [R. 1516, 1517, 856.]

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

The following assignments of error, relevant to the following points presented in the argument herein, are intended to be urged:

The assignments relevant to Points II(1), II(2) and II(3) of the argument are: 1 [R. 1867], 4 [R. 1870], 5(a) to 5(r), inclusive [R. 1870-1872], 6(a) to 6(k), inclusive [R. 1872, 1873], 7 [R. 1873-1875], and 12 [R. 1875.]

The assignment relevant to Point III(1) of the argument is: 2(d). [R. 1868.]

The assignments relevant to Point III(3) of the argument are: 2(a) to 2(c), inclusive [R. 1867], 2(e) to 2(j), inclusive [R. 1868], and 3(i) to 3(l), inclusive. [R. 1869, 1870.]

The assignments relevant to Point III(4) of the argument are: 4 [R. 1870], and 5(a) to 5(r), inclusive. [R. 1870-1872.]

The assignments relevant to Point III(5) of the argument are: 2(k) to 2(m), inclusive [R. 1868, 1869], and 3(d) to 3(g), inclusive. [R. 1869.]

SUMMARY OF ARGUMENT.

I.

The District Court concluded that Standard's "requirements" contracts were unlawful solely because (a) more than 5000 dealers were affected, and (b) a large dollar volume of products was handled thereunder. In its opinion it stated that it was "compelled to find the practices here involved to be violative of both the Sherman and Clayton Acts since they affected "an appreciable segment" of commerce.

Proceeding upon this narrow factual foundation and misapplying the "appreciable segment" of commerce theory, the District Court excluded competent evidence as to the effect on competition of an elimination of the "requirements" clauses; as to the economic aspects of a "split-pump" distribution system as compared with the present single-supplier system; as to whether the "split-pump" system is inherently and from the economic standpoint a more expensive distribution system; as to the effect of the "requirements" contracts on prices; and as to the economic merits or demerits of the present system as contrasted with a system which might prevail if the "requirements" clauses were eliminated. The District Court stated that any advantages which resulted to the dealer and indirectly to the public from the "requirements" contracts was "not a proper subject of inquiry."

Consonant with its erroneous application of the "appreciable segment" of commerce theory, the District Court, although its attention was invited to their importance in the light of *United States v. Columbia Steel Co.*, 334 U. S. 495, 527, failed to make findings of fact with reference to the following factors: the number of dealers who

handle the products of Standard's competitors, and whether such number had increased or decreased; the number of Standard's competitors, and whether such number had increased or decreased; the volume of products handled by Standard's competitors, and whether such volume had grown or declined in comparison with Standard's volume; the fact that the increase in consumer demand and consumption had been greater than the increase in Standard's dealer sales; Standard's practice in supplying dealers without contracts, and the dealer's freedom of choice in selecting a supplier with whom to contract, and, if he selected Standard, the type of contract to be executed; the fact that dealers under contract with Standard did not have the "favorably situated" outlets, or a monopoly in any given area; the decrease in the number of Standard's dealer outlets; the practices of Standard's competitors in seeking contracts and in contracting with dealers; the general adoption of a single-supplier system of gasoline distribution in the Western area by a multitude of dealers handling the products of Standard's competitors; the reasons for a dealer's handling the products of a single-supplier; and the probable effect upon competition of an elimination of the "requirements" contracts.

II.

The District Court erred in thus disregarding the competitive and economic background. It should have weighed the evidence which was received showing such background. It should have received and weighed the evidence touching such background which it excluded. Defendants were entitled to have all such evidence considered and weighed by the trier of fact.

Under both the Sherman and Clayton Acts the District Court should have applied a "rule of reason"—the test of

presence or absence of prejudice to the public interest. (*Nash v. United States*, 229 U. S. 373, 376; *International Shoe Co. v. Comm'n.*, 280 U. S. 291, 298.) Applying such test the District Court should have considered and weighed all facts bearing upon the competitive and economic background.

This was not a case which could properly be decided solely by resort to an "appreciable segment" of commerce theory, for in this case there was no restraint which was "illegal *per se*," and there was "no specific intent to accomplish a forbidden restraint." (*United States v. Columbia Steel Co.*, 334 U. S. 495, 522.)

The District Court should have determined the reasonableness or unreasonableness of the alleged restraint by considering and weighing *all* of the factors entering into the competitive and economic background, instead of *deciding that there was unreasonableness solely because an "appreciable segment" of commerce was affected by the contracts.*

There being no restraint "illegal *per se*," nor any "intent to accomplish a forbidden restraint," the broad scope of the factors which the District Court should have weighed is indicated in *Chicago Board of Trade v. United States*, 246 U. S. 231, 238; *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 360; *Standard Oil Co. v. United States*, 283 U. S. 163, 177, 182; and *United States v. Columbia Steel Co.*, 334 U. S. 495, 524. The District Court did not weigh these factors. *It considered only Standard's operations, divorced from the factors comprising the competitive and economic background.* If these factors were material in the *Columbia Steel* case, they were certainly material in our case. In the former exclusive dealing was brought about through vertical integration and was permanent. In our case exclusive dealing is

alleged to have been brought about by "requirements" contracts, but it lasts only during the limited period that such contracts can be enforced by the supplier.

III.

Upon the evidence in our record (and without reference to the evidence excluded and the District Court's error in so doing) the District Court erred in concluding that there was a violation of either the Sherman or Clayton Act.

In the first place, the "requirements" contracts do not fall within the purview of sec. 3 of the Clayton Act, since they do not require the purchaser to buy *all* his requirements from Standard, but only his requirements for resale *at a single specified retail outlet*. The obligation imposed upon the dealer by Standard's contracts is not shown to have had any broader effect than the obligation of the contracts upheld in *Federal Trade Comm. v. Sinclair Co.*, 261 U. S. 463.

In the second place, the "requirements" contracts are not an unreasonable restraint nor do they have the effect of substantially lessening competition or tending to create monopoly.

Granted that sec. 3 of the Clayton Act seeks to reach agreements embraced within its sphere in their incipiency, the contracts here in question have been in use for about nine years; thus their "effect" has been amply demonstrated. This was the view of the District Court. Therefore speculation as to their "probable" or "possible" future effect is unnecessary. Their legality should be adjudged by what has already occurred.

There was no unreasonable restraint. The facts shown in the opening Statement herein demonstrate this. A comparison of the facts of our case and the facts in *United States v. Columbia Steel Co.*, 334 U. S. 495, is especially

persuasive. After operating for about nine years under "requirements" contracts, Standard's gasoline sales through dealer outlets are only 6.7% of the total taxable gasoline gallonage; its dealer sales of lubricating oil are only 5% of the total; its dealer sales of tires are only 2% of the total; and its dealer sales of batteries are only 1.8% of the total. Contracts are not forced on dealers, either by the dealer's necessities, or otherwise. Dealers can buy gasoline or lubricating oil from Standard without a contract of any kind, and, at a moment's notice, switch their patronage to one of Standard's numerous competitors. Nor is a dealer desiring to contract with Standard forced to contract for the full line of Standard's products. If the dealer wants to contract for Standard's gasoline and lubricating oil, he is free to contract with Standard for these products and buy his tires, batteries and other automotive accessories from one of Standard's numerous competitors.

There was no substantial lessening of competition. The facts shown in the opening Statement herein demonstrate this. The "requirements" contracts having been in use for about nine years, the proof fails to show any diminution in the number of Standard's competitors, or in the size or power of such competitors, or that such competitors enjoy a smaller proportion of the available customers or volume of business. Such proof as the record contains is all to the contrary. Year by year Standard's proportion of the business has shown no increase and in the case of lubricating oil has shown an actual decrease. The number of Standard's dealer outlets has substantially decreased in nine years. Standard's competitors are shown to be numerous, powerful, and aggressive and most of its major competitors are shown to have employed "re-

quirements" contracts for a considerable period. Of the 36,500 retail outlets in the Western area handling the gasoline of Standard and its competitors, 98.4% are shown to be handling the gasoline of only one supplier. The primary reason for this is shown to be the danger of substitution if the product of more than one supplier is handled at a given outlet; and another reason is the dealer's own preference due to "assurance of supply" where the product of only one supplier is handled.

There was no monopoly or tendency to create monopoly. There has been no enlargement of an existing patent monopoly, as in the tying-clause cases: *United Shoe Machinery Corp. v. United States*, 258 U. S. 451; *International Business Machines Corp. v. United States*, 298 U. S. 131; and *International Salt Company v. United States* 332 U. S. 392; or of an existing actual monopoly, as in *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346. Standard has never had any patent monopoly or actual monopoly. Nor have privileges been exacted through the leverage of monopoly power, as in *United States v. Griffith*, 334 U. S. 100, 106; *Schine Theatres v. United States*, 334 U. S. 110, 116; and *United States v. Paramount Pictures*, 334 U. S. 131, 157, 158. Standard has never had monopoly power.

Finally, the decree should in any event except from its operation the contracts between Standard and *California* dealers. It has not been shown that such contracts contemplated or required or actually involved any movement of goods in *interstate* commerce. It has not been shown that such contracts restrained *interstate* commerce, or that they were "in the course of" or substantially affected such commerce. (*Addyston Pipe & Steel Co. v. United State*, 175 U. S. 211, 247; *United Shoe Machinery Co. v. United States*, 258 U. S. 451, 465.)

ARGUMENT.

I.

THE DISTRICT COURT CONCLUDED THAT A VIOLATION OF THE ANTI-TRUST LAWS WAS CONCLUSIVELY ESTABLISHED SOLELY BECAUSE OF THE NUMBER OF DEALERS UNDER CONTRACT AND THE DOLLAR VOLUME OF PRODUCTS HANDLED THEREUNDER; THAT AN "APPRECIABLE SEGMENT" OF COMMERCE BEING THUS AFFECTED, DECISIONS OF THIS COURT COMPELLED THE CONCLUSION THAT DEFENDANTS' CONDUCT WAS UNLAWFUL IRRESPECTIVE OF ALL OTHER COMPETITIVE AND ECONOMIC FACTORS.

The District Court based its conclusion that Standard's "requirements" contracts were unlawful *solely* upon two factors: (a) the fact that there were more than 5000 dealers affected by these contracts; and (b) the fact that a large dollar volume of products was handled under these contracts. From these facts, the District Court concluded that an "appreciable segment" of commerce was affected; that this *conclusively established* a violation of the Act, everything else being inconsequential.

(1) This Conclusion Is Disclosed by the District Court's Opinion.

In its opinion of June 7, 1948, the District Court said:

> "Substantiality of restraint or tendency to create monopoly *is established* by (a) the market foreclosed, —*here represented by the controlled units*,—and (b)

the volume of controlled business, totaling here in value $68,000,000.00.[42]

Fractionally speaking, the business done by the competitors with their own outlets of with those under contract is much greater than the business of Standard,—both in volume and in money value. *Nevertheless, the business of Standard is considerable. In effect, it amounts to a substantial lessening of competition and a monopoly of a sizeable segment* of a line of commerce in a definite area—the seven Western states." [R. 126.]

Concluding such opinion the District Court said:

"So we come to the end of our discussion. *As the restriction corners a market of the value of $68,000,000.00,*[42] *it is illegal, even considered on a comparative basis.* Concede further, that the arrangement was entered into in good faith, with the honest belief that control of distribution and consequent concentration of representation were economically beneficial to the industry and to the public, that they have continued for over fifteen years openly, notoriously and unmolested by the Government, and have been practiced by other major oil companies competing with Standard, that the number of Standard outlets so controlled may have decreased, and the quantity of products supplied to them may have declined, on a comparative basis. *Nevertheless, as I read the latest cases of the Supreme Court, I am compelled to find the practices here involved to be violative of both statutes. For they affect injuriously a sizeable part of interstate commerce, or,—to use the current phrase —'an appreciable segment' of interstate commerce."* [R. 130.]

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[42]The District Court's finding was $65,846,412.21—not $68,000,000. [R. 180.]

Thus the District Court's decision was based upon an "appreciable segment" of commerce theory. Such factors as "the percentage of business controlled, the strength of the . . . competition," whether the contracts sprang "from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market"[43] were brushed aside as being of no consequence.

(2) This Conclusion Is Disclosed by the District Court's Exclusion of Evidence Offered by Defendants With Respect to the Effect on Competition of the Elimination of the "Requirements" Contracts and the Public Benefit From the System of Distribution Employed by Defendants and Their Competitors and the Public Detriment From the System of Distribution Which Would Ensue From an Abolition of the Contracts, and the District Court's Ruling That It Would Refuse to Allow Testimony Along This Line or Testimony Concerning the Effect on Prices, or the Economic Merits or Demerits of the Practices Complained of.

The District Court's adoption of an "appreciable segment" of commerce theory resulted in the exclusion of evidence embracing a wide field of inquiry.

In this suit the government was seeking the elimination of Standard's "requirements" clauses.

For the purpose of determining the change, if any, which would ensue from an elimination of these clauses and the effect on the public of any such change, defend-

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[43] *United States v. Columbia Steel Co.*, 334 U. S. 495, 527 (1948).

ants called Robert W. Garrett, an expert shown to have familiarity through study and experience with problems incident to the marketing of petroleum products,[44] and propounded to him a series of questions. The government objected to each such question. Each such objection was sustained. [R. 1141-1144.]

These questions sought Mr. Garrett's opinion as to *the effect on competition of the elimination of "requirements" clauses generally;* whether such elimination would tend to a substantial increase in company-operated stations, or the promotion of dealer-operated chains of service stations; *what change, if any, would occur in the over-all competitive picture so far as it relates to suppliers of products to retail service station outlets if a "split-pump" system became general;* whether the elimination of "requirements" clauses by suppliers generally would increase or decrease the number of existing service stations, or give the more prominent suppliers a competitive advantage; as to *the economic aspects of the "split-pump" distribution system as compared with the present single-supplier system of distribution;* in the petroleum marketing field; *whether a "split-pump" system would increase the cost of distribution* as compared with the single-supplier system so far as either the dealer or the supplier is concerned; *whether the "split-pump" system is inherently and from the economic standpoint a more expensive system of distribution,* and whether, assuming that a "split-pump" system from the economic standpoint would be a more expensive system,

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[44] Following academic training in economics, Mr. Garrett's subsequent employment over a period of years led to intimate familiarity with gasoline marketing methods and problems generally, including cost under different methods of distribution. [R. 1135, 1136.]

added expense thereunder would be ultimately borne the purchasing public.[45]

At the time of its ruling sustaining objection to these quiries, the District Court stated that it would not per t testimony concerning the effect of the "requirements" ntracts on prices, or the economic merits or demerits the present system as contrasted with a system which ght prevail if the contract provisions attacked by plain- f were eliminated, and that *it was immaterial that eco- mic benefit might result from the present system or nomic detriment result from its abandonment.*

The District Court said:

". . . I am not going to allow any testimony regarding the effect of this arrangement on prices,

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[45]The specific questions, which Mr. Garrett was not permitted to swer, were:

(a) "What, in your opinion, Mr. Garrett, would be the effect on competition of the elimination of requirement clauses by suppliers generally? I am asking you for your opinion as an expert in the field of marketing of petroleum products and, in the light of your training and experience in that field?" [R. 1141.]

(b) ". . . Would the elimination of requirement clauses, Mr. Garrett, by suppliers generally, in your opinion, tend to a substantial increase in company-operated units?" [R. 1141, 1142.]

(c) "Mr. Garrett, in your opinion, would the elimination of requirements contracts by suppliers generally tend to promote the growth of dealer-operated chain of service stations?" [R. 1142.]

(d) "Mr. Garrett, assume that a split-pump system became general; in your opinion, based upon your training and experience, what, if any, would be the change in the overall competitive picture under such split-pump system so far as it relates to suppliers of products to retail outlets?" [R. 1142.]

(e) "Would the elimination of all requirements clauses by suppliers generally increase or decrease the number of existing service stations?" [R. 1142.]

because I have already said that I consider it immaterial for two reasons; first, that this is not a price-fixing case and, in the second place, it appears that the unreasonableness of the restraint under the Sherman Act and the substantiality of the restriction under the Clayton Act are not affected by the price at which the product is sold to the public. [R. 1138.]

"I desire to state for the record that I consider the questions propounded to this witness as going to

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(f) "Would the elimination of all requirements clauses by suppliers generally tend to give the more prominent suppliers a competitive advantage?" [R. 1143.]

(g) "From the economic standpoint, Mr Garrett, what can you tell us about the split-pump distribution system as compared with the present single supplier system of distribution in the petroleum marketing field?" [R. 1143.]

(h) "From the economic standpoint does a split-pump distribution system increase the cost of distribution as compared with a single supplier system so far as the dealer is concerned?" [R. 1143.]

(i) "From the economic standpoint does a split-pump distribution system increase the cost of the distribution as compared with a single supplier system so far as the supplier is concerned?" [R. 1143.]

(j) "Is a split-pump system inherently and from the economic standpoint a more expensive system of distribution?" [R. 1143.]

(k) "Assuming that a split-pump system from the economic standpoint would be a more expensive system, in your opinion, would the added expense under a split-pump system be ultimately borne by the purchasing public?" [R. 1144.]

Defendants made no offer of proof, for the questions themselves adequately indicated the materiality of the inquiry. Moreover, early in the trial the District Court had stated: "Do not make an offer of proof. I never accept an offer of proof because it encumbers the record with a lot of things. . . ." [R. 305.]

the economic merits or demerits of the present system as contrasted with a system which prevailed prior to its establishment and which would prevail if the court declared the present arrangement between the supplier, the Standard Oil Company, and the stations governed by dealership contracts or the TBA contracts other than and not including the company-operated stations.

"For the reasons indicated, I consider the inquiry beyond the scope of this lawsuit and entirely immaterial because, if the practice is one forbidden by the Statute, the fact that it may result in economic benefit or its abandonment might result in economic loss is not material under the decisions of the Supreme Court and the Circuit Courts of Appeals, as I read them.

"I will state for the record that I would sustain objections to similar inquiry on the part of any other witnesses that the defendant might produce; and I would sustain objections to any chart or documentary evidence seeking to elicit the facts implied in these questions.

"And I will further state for the record that, because of that, the defendants need not call such witnesses or offer such exhibits or make an offer of proof to cover the facts sought to be elicited through this inquiry.

"What is that old expression? 'Hog-tight, bull-strong, and horse-high,' isn't it, like an old-fashioned fence? I have given you a ruling there that will

allow you to bring up any facet of that question before any court of appeal that this case may reach." [R. 1144, 1145.]

Previous to these admonitions, the District Court in colloquy with counsel had said:

". . . I think that any inducement that the company makes is material, *but any advantages which result to the dealer and indirectly to the public from the arrangement between the company and the dealers is not a proper subject of inquiry, because we are going back again to the question of economic advantage.*" [R. 1088.]

In the face of these explicit admonitions, defendants perforce refrained from further attempt to introduce evidence along this line or evidence concerning the effect on prices of the practices complained of or the economic merits or demerits of such practices.

A question of law which is a proper subject of review is presented when a trial court excludes competent evidence of a material fact. *McCandless v. United States*, 298 U. S. 342, 345 (1936). Subsequent argument herein will show the materiality of the evidence excluded by the District Court.

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(3) This Conclusion Is Disclosed by the District Court's Failure to Make Findings With Respect to the Competitive Picture and Defendants' Position Therein, Defendants' Purpose, Consumer Demands, and the Characteristics of the Market Generally, Despite Evidence Introduced by the Defendants Upon These Issues and Despite Defendants' Request for a Consideration of These Factors.

The District Court's adoption of an "appreciable segment" of commerce theory resulted in findings of fact which ignored uncontradicted evidence.

The findings substantially ignore the competitive picture and defendants' position therein, defendants' purpose, consumer demands, and the characteristics of the market generally. These were matters put in issue by the fourth and fifth affirmative defenses of defendants' answer [R. 95, 96] as well as by denials of the answer. [R. 88-95.]

The findings deal generally with the making of the contracts and subleases [R. 170-171]; the contents of such contracts and subleases [R. 171-178]; the number of these contracts and subleases outstanding [R. 178]; oral "requirements" contracts and the number thereof [R. 179]; the number of retail outlets operated by independent dealers having contractual relations with Standard [R. 179, 180]; the quantity and dollar volume of business done between defendants and independent dealers [R. 180]; the independent contractor relationship between defendants and independent dealers [R. 181]; the means

and methods pursued by defendants to induce independent dealers to make contracts and subleases [R. 181]; the movement and distribution in interstate commerce of defendants' products [R. 181-183, 185]; and unsuccessful attempts by manufacturers and producers of competing products to sell or to increase their sales to independent dealers having contractual relations with Standard. [R. 184, 185.]

The only reference to the competitive picture and defendants' position therein is the finding [par. 25] that defendant Standard sells between 12% and 14% of all gasoline sold or distributed through independent retail dealer outlets in the Western area;[46] that in a majority of the states in such area Standard is the largest single marketer of gasoline through such outlets; and that Standard during 1946 sold approximately 23% of all gasoline sold in such area. [R. 182.][46] This ignored most of the evidence which defendants introduced as a part of their defense.

Following the publication of the District Court's opinion of June 7, 1948, and before any findings were made, defendants moved that the District Court reopen the cause and hear further argument upon and reconsider its opinion in view of the decision of this Court on June 7, 1948,

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[46]See comment on this finding in the opening Statement, pages 25, 26 herein.

in *United States v. Columbia Steel Co.*, 334 U. S. 495. [R. 141, 142.][47]

Supporting this motion for reconsideration defendants filed a printed memorandum pointing out the error of the District Court in predicating its decision upon the limited factors referred to and specifically inviting the District Court's attention to uncontradicted evidence of other facts exhibiting the competitive setting which, under the decision in the *Columbia Steel* case, ought to have been considered. [R. 142-157.]

This motion for reconsideration was denied on June 28, 1948. [R. 168.]

The findings subsequently made, except as above pointed out, ignored facts disclosing the competitive picture and defendants' position therein, defendants' purpose, consumer demands, and the characteristics of the market generally, despite uncontradicted evidence introduced by the defendants upon these matters. They ignored much of the uncontradicted evidence summarized in the opening Statement herein—evidence relating to the number and strength of Standard's competitors, the similar practices employed by such competitors, and their growth and apparent prosperity; Standard's position in the competitive

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[47]This motion was made on the premise that the District Court's opinion of June 7, 1948, did not constitute a judgment and that the District Court retained jurisdiction to reconsider and revise its conclusions stated in such opinion. *Marconi Wireless Co. v. United States*, 320 U. S. 1, 47 (1943); *Continental Nat. Bank v. National City Bank*, 69 F. 2d 312, 317 (C. C. A. 9, 1934; cert. den. 293 U. S. 557); *G. Amsinck & Co. v. Springfield Grocer Co.*, 7 F. 2d 855, 858 (C. C. A. 8, 1925).

picture, Standard's relative position in the competitive field from year to year during the period that the "requirements" contracts have been in use; Standard's practice in supplying dealers without any contract whatever and the dealer's free choice in determining whether he will contract with one of Standard's competitors or with Standard, and if the latter, the form of contract he will sign; the origin and long use of "requirements" contracts; the general adoption of a single-supplier system of gasoline distribution in the Western area by a multitude of dealers handling the products of Standard's competitors; Standard's practice of avoiding a concentration of dealers in one locality; Standard's failure to have contracts with the dealers occupying "favorably situated" retail outlets; the benefit in cost to both the dealer and the public from the use of the "requirements" contracts; and the danger of substitution from any return to a "split-pump" regime.[48]

When a trial court neglects to find a fact material to a determination of the cause, such neglect is equivalent to a ruling that such fact is immaterial. This presents a question of law which is a proper subject of review. *The Francis Wright*, 105 U. S. 381, 387 (1881); *The E. A. Packer*, 140 U. S. 360, 364 (1891); *The City of New York*, 147 U. S. 72, 77 (1893). Subsequent argument herein will show the materiality of the facts ignored by the District Court's findings.

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[48]See our subsequent argument, page 110 herein, with reference to the District Court's failure to find facts requisite to show illegality.

II.

THE DISTRICT COURT ERRED IN DISREGARDING COMPETITIVE AND ECONOMIC FACTORS. THESE FACTORS SHOULD HAVE BEEN CONSIDERED AND WEIGHED.

As already pointed out, the District Court excluded evidence as to what would ensue from an elimination of the "requirements" contracts, and also disregarded a great deal of the evidence which was received showing the competitive and economic background. This was error.[49]

Defendants were entitled to have the District Court, the trier of fact, consider and weigh all of this evidence, *i. e.*, consider and weigh the competitive and economic factors, such as "the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market."[50] If these factors, which were brushed aside as inconsequential, had been considered and weighed, can anyone say that the result would not have been different? We contend that these factors required a different decision.

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[49]Error is specifically assigned. [R. 1872-1875, 1867.]

[50]*United States v. Columbia Steel Co.*, 334 U. S. 495, 527 (1948).

(1) Presence or Absence of Prejudice to the Public Interest Was the Test Which the District Court Should Have Employed, Both Under the Sherman Act and the Clayton Act.

(A) THIS WAS THE PROPER TEST UNDER THE SHERMAN ACT.

Sec. 1 of the Sherman Act makes unlawful contracts in *unreasonable*[51] restraint of trade.

To determine whether alleged restraint is unreasonable or reasonable, the test is presence or absence of prejudice to the public interest.

In *Nash v. United States*, 229 U. S. 373, Mr. Justice Holmes, speaking of the *Standard Oil* and *American Tobacco* cases, said (p. 376):

> "Those cases may be taken to have established that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, *prejudice the public interests* by unduly restricting competition or unduly obstructing the course of trade."[52]

(B) THIS WAS THE PROPER TEST UNDER THE CLAYTON ACT.

Sec. 3 of the Clayton Act makes it unlawful for any person to make a contract for the sale of goods "on the condition, agreement, or understanding" that the purchaser "shall not use or deal in the goods . . . of a competi-

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[51] *Standard Oil Co. v. United States*, 221 U. S. 1, 60 (1911); *American Tobacco Co. v. United States*, 221 U. S. 106, 179 (1911).

[52] This statement of this rule has been cited with approval in: *Thomsen v. Cayser*, 243 U. S. 66, 85 (1917); *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 360 (1933); and *Sugar Institute v. United States*, 297 U. S. 553, 597 (1936).

tor" where the effect of such contract may be "*to substantially lessen competition or tend to create a monopoly in any line of commerce.*"

As already pointed out, *presence or absence of prejudice to the public interest* is the test which will be applied under the Sherman Act in determining whether or not there has been an *unreasonable* restraint.

The same thing is true under the Clayton Act. The same test—*presence or absence of prejudice to the public interest*—must be applied under sec. 3 of that Act in determining whether the effect of the contracts attacked may be to *substantially lessen competition or tend to create monopoly.*

Thus, in *International Shoe Co. v. Comm'n.*, 280 U. S. 291, dealing with sec. 7 of the Clayton Act (38 Stat. 731; 15 U. S. C. sec. 18), which uses the same language found in sec. 3, *i. e.* forbids certain stock acquisitions where the effect "*may be to substantially lessen competition . . . or tend to create a monopoly* of any line of commerce," this Court said (p. 298):

> "In *Standard Oil Co. v. Federal Trade Commission*, 282 Fed. 81, 87,[53] the Court of Appeals for the Third

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[53] In *Standard Oil Co. v. Federal Trade Commission*, 282 Fed. 81 (C. C. A. 3, 1922, affirmed 261 U. S. 403), it was said (p. 87): "Therefore in determining whether given acts amount to unfair methods of competition within the meaning of the Federal Trade Commission Act, or *substantially lessen competition* and tend to create a monopoly within the meaning of the Clayton Act, *the only standard of legality with which we are acquainted is the standard established by the Sherman Act in the words 'restraint of trade or commerce' and 'monopolize, or attempt to monopolize,' and by the courts in construing the Sherman Act, with reference to acts which operate to the prejudice of the public interest* by unduly restricting competition or unduly obstructing the due course of trade, and 'restrict the common liberty to engage therein.'"

Circuit applied the test to the Clayton Act which had theretofore been held applicable to the Sherman Act, namely, that *the standard of legality was the absence or presence of prejudice to the public interest* by unduly restricting competition or unduly obstructing the due course of trade. In *Federal Trade Comm'n. v. Sinclair Co.*, 261 U. S. 463, 476, referring to the Clayton Act and the Federal Trade Commission Act, this Court said:

"'The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain.'

"Mere acquisition by one corporation of the stock of a competitor, even though it result in some lessening of competition, is not forbidden; the act deals only with such acquisitions as *probably* will result in lessening competition to a substantial degree, *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 357; that is to say, *to such a degree as will injuriously affect the public.*"

Presence or absence of prejudice to the public interest *must be the test*—otherwise a multitude of contracts must be condemned. In a sense every contract to sell lessens competition, and in many cases such contract lessens a great deal of competition. This is true, because the making of any contract to sell removes the articles contracted to be sold from competition. The contract buyer will not, after such contract is concluded, buy such articles from anyone but the contract seller. Competition with respect to such articles is at an end. Implicit in the contract to purchase is an "understanding" that the buyer under such contract will not deal with a competitor of the seller for that particular quantity of goods. Thus this Court has said that "every agreement concerning trade . . . re-

strains." (*Chicago Board of Trade v. United States*, 246 U. S. 231, 238; repeated in *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 361); that "every exclusive arrangement in the business or commercial field may produce a restraint of trade" (concurring opinion of Mr. Justice Douglas in *Associated Press v. United States*, 326 U. S. 1, 23).[54] For example, suppose that manufacturers A and B are competing with one another for the patronage of C, a prospective buyer of their products. A succeeds in inducing C to contract to purchase from A a substantial quantity of A's products which C thinks he will need over a certain period or for a certain purpose. The conclusion of this contract eliminates B's chances for the time being of selling his products to C. *This is true, whether A's contract calls for the supplying of C's "requirements" or for the supplying of a definite quantity.* The "understanding" between A and C as a result of A's contract is

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[54] As pointedly expressed by Circuit Judge Sanborn in *Whitwell v. Continental Tobacco Co.*, 125 Fed. 454, 462 (C. C. A. 8, 1903): *"An attempt by each competitor to monopolize a part of interstate commerce is the very root of all competition therein. Eradicate it, and competition necessarily ceases—dies. Every person engaged in interstate commerce necessarily attempts to draw to himself, and to exclude others from, a part of that trade; and, if he may not do this, he may not compete with his rivals, all other persons and corporations must cease to secure for themselves any part of the commerce among the states, and some single corporation or person must be permitted to receive and control it all in one huge monopoly.* The purpose of the act of July 2, 1890, was, however, to prevent the stifling of competition, not to destroy it or to foster monopoly, and any construction of any of its provisions which would give it such an effect is unreasonable and inconsistent with the object and spirit of the law."

To the same effect, see *United States v. Standard Oil Co. of New Jersey*, 47 F. 2d 288, 297 (Mo. 1931).

certainly that C will purchase from A, and not from B, the competitor, the products called for by such contract. During the life of A's contract, B's "competition" for this business is no longer a factor. During that period B is "shut-away" from that part of his potential market represented by A's business with C.

But every contract to buy and sell goods in commerce, even though such contract involves a very large quantity, *i. e.*, is "substantial" in the quantitative sense, cannot be a violation of sec. 3. "*Substantially lessen competition*" cannot be given a mere quantitative meaning. It cannot be determined (as the District Court assumed to determine it) solely from a consideration of the number of Standard's contracts and the dollar volume of products handled thereunder. Something more—*injury to the public interest*—must be shown before the contract can be condemned as coming within the words "*substantially lessen competition.*" *These words require the application of a "rule of reason"* analogous to the rule under sec. 1 of the Sherman Act. "The mere fact that the parties to an agreement eliminate competition between themselves is not enough to condemn it." (*Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 360.) As said by Circuit Judge Kimbrough Stone, speaking for a three-judge court: "It is only when this lessening [of competition] is with an unlawful purpose or by unlawful means, or *when it proceeds to the point where it is or is threatening to become a menace to the public*, that it is declared unlawful . . . *The point of danger is reached when monopoly is threat-*

ened.". (United States v. Standard Oil Co. of New Jersey, 47 F. 2d 288, 297.)

Sec. 3 of the Clayton Act, referring to "competition" uses the words "substantially *lessen.*". What is a substantial *lessening* of competition in the light of the purposes which the Act sought to accomplish? As already pointed out, competition in a sense is lessened when A, competing with B for the patronage of C, succeeds in concluding a contract with C for a future supply of A's products, and if such contract embraces large quantities then, in a quantitative sense, there is a "substantial" lessening of competition. But this could not have been the sense contemplated by Congress, for if so, a multitude of contracts in every branch of commerce and industry must be condemned. The rule of reason to be applied here is the rule announced in the *International Shoe Co.* case, *supra*, viz., *injury to the public interest.* Tested by this rule, the lessening of competition condemned must be—not a lessening of competition arising merely from success in contracting for the future disposal of a supply of goods, but a lessening of competition in the sense that competitors are eliminated by means which are unfair and thus work an injury to the public interest.[55]

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[55] *Federal Trade Comm'n. v. Morton Salt Co.*, 334 U. S. 37 (1948) arose under sec. 2 of the Clayton Act as amended by the Robinson-Patman Act. That section forbids price discriminations where their effect "may be substantially to lessen competition or tend to create a monopoly . . . *or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination*, or with customers of either of them . . ." The first part of this is like sec. 3 of

This "rule of reason" in the interpretation of sec. 3 was applied in *B. S. Pearsall Butter Co. v. Federal Trade Commission*, 292 Fed. 720 (C. C. A. 7).[56] There a complaint against petitioner before the Commission charged a violation of sec. 3 of the Clayton Act. Petitioner was a manufacturer of margarine products. Such products were also manufactured by other companies. Petitioner's contracts provided that dealers handling petitioner's products *should handle its products exclusively in a given territory* during the life of such contracts. About twenty other manufacturers of margarine products used a contract like that of petitioner, by which the dealer agreed to wholesale the manufacturer's brands of margarine exclusively in a

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the Clayton Act with which we are here concerned. The italicized part has no counterpart in sec. 3. In this *Morton Salt* case it was unnecessary for the Court to determine the meaning of "substantially to lessen competition or tend to create a monopoly." The case was controlled by the italicized language. Thus, the Court remarked in a footnote at p. 47 of the opinion: "The statute outlaws any discrimination the effect of which 'may be substantially to lessen competition . . . or to injure . . . competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them . . .'" and in its opinion the Court said (p. 46): "Here the Commission found what would appear to be obvious, that the competitive opportunities of certain merchants were injured when they had to pay respondent substantially more for their goods than their competitors had to pay. . . . (p. 47) . . . 'That respondent's quantity discounts did result in price differentials between competing purchasers sufficient in amount to influence their resale prices of salt was shown by evidence.'" So the ruling in this case was against Morton because the discriminations *injured competition* between merchants some of whom received the benefit of such discriminations.

[56] This case has been cited with approval in *Lipson v. Socony-Vacuum Corp.*, 76 F. 2d 213, 218 (C. C. A. 1, 1935), and *Boro-Hall Corp. v. General Motors Corp.*, 130 F. 2d 196, 197 (C. C. A. 2, 1942; cert. den. 317 U. S. 695).

given territory, and most of the rest of the manufacturers had some kind of understanding for exclusive representation with the various jobbers handling their products. This case on its facts closely resembles our case. The Circuit Court held that there was no violation of the Act.[57]

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[57] The Circuit Court said (pp. 722, 723):

"There does not appear to be anything distinctive about its product—nothing which could not readily be supplied by many other makers of this apparently standardized product. Petitioner does not occupy 'a dominant position' in that line of commerce, as was the case in United Shoe Mach. Co. v. United States, 258 U. S. 451, 42 Sup. Ct. 363, 66 L. Ed. 708. And it cannot be here said, as in the last-named case, that to its customer its particular product may be absolutely essential to the prosecution and success of his business.

"It is interesting here to note that it was only five years previous that petitioner entered into this doubtless then well standardized business, in competition with many others, most of whom have arrangements with their jobbers more or less similar, and that in the face of this competition, in such brief time built up a business of about 4,000,000 pounds for its last year. From this it may well appear that the similar practice by others in the same class did not result in stifling of competition and monopolizing the trade to the substantial or serious detriment of this recent entrant therein. Nothing here appears to indicate that the ultimate distributor of the product, the retailer, is in any way bound or restricted. He is generally familiar with the market, and with the ways and means of transportation of commodities, and if he desires in his business to handle the product of other makers he is at liberty to procure it—from the maker himself or from those who handle it.

"Most of the witnesses unite in saying that in the handling of this product there is advantage to manufacturer, jobber, retailer, and the public in having a particular brand handled exclusively by one jobber in a given locality wherein he handles no other similar product, and while one or two did say, on being examined as to the result of such a contract, that it might restrict competition, it is evident that they meant no more than that the employment of such contracts might in some circumstances so result. Under the particular facts which this record discloses, it is our view that the contract in question, as employed by this petitioner, does not fall under the condemnation of section 3 of the Clayton Act."

(2) This Was Not a Case Which Could Properly Be Decided Solely by Resort to an "Appreciable Segment" of Commerce Theory.

The District Court decided this case solely upon an "appreciable segment" of commerce theory. It said:

> "Substantiality of restraint or tendency to create monopoly *is established* by (a) the market foreclosed, —here represented by the controlled units,—and (b) the volume of controlled business, totaling here in value $68,000,000.00. [R. 126.]
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> ". . . as I read the latest cases of the Supreme Court, *I am compelled to find* the practices here involved to be violative of both statutes. For they affect injuriously a sizeable part of interstate commerce, or,—to use the current phrase—'an *appreciable segment*' of interstate commerce." [R. 130.]

To support this "appreciable segment" of commerce theory, *United States v. Yellow Cab Co.*, 332 U. S. 218, was relied upon. [R. 119, 120.] There it was said (pp. 225, 226) that the Act "outlaws *unreasonable* restraints on interstate commerce, regardless of the amount of the commerce affected. . . . Hence it is enough if some *appreciable part* of interstate commerce is the subject of a monopoly, a restraint or a conspiracy. . . . Its [CCM's] relative position in the field of cab production has no necessary relation to the ability of the appellees to conspire to monopolize or restrain . . . an *appreciable segment* of interstate cab sales."

But this does not say that "unreasonableness" is established *solely* by finding that an appreciable or even a sizeable part of commerce is affected. The "unreasonable-

ness" of the restraint must first be determined. This being determined, the case is brought within the power to regulate interstate commerce and hence within the Act by a finding that an "appreciable segment" of interstate commerce is affected by such unreasonable restraint.

The District Court in our case erred in making the fact that an "appreciable segment" of commerce was affected, the *sole test* of reasonableness.[58]

If it be true, as this Court has said, that "every agreement concerning trade . . . restrains" (*Chicago Board of Trade v. United States*, 246 U. S. 231, 238; repeated in *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 351),[59] then the rule followed by the District Court would make every sales contract illegal under the Act, provided such contract affected an "appreciable segment" of commerce. The repercussions of such a rule would be infinite.

The error of the District Court is demonstrated by the opinion of this Court in *United States v. Columbia Steel Co.*, 334 U. S. 495. There it was pointed out that

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[58]Error is specifically assigned. [R. 1867.]

[59]See also the concurring opinion of Mr. Justice Douglas in *Associated Press v. United States*, 326 U. S. 1 (1945), where it was said (p. 23):

"Every exclusive arrangement in the business or commercial field may produce a restraint of trade. A manufacturer who has only one retail outlet for his product may be said to restrain trade in the sense that other retailers are prevented from dealing in the commodity. . . . But *Standard Oil Co. v. United States*, 221 U. S. 1, construed the Sherman Act to include not every restraint but only those which were unreasonable."

if the restraint is "illegal *per se*" or there is a "specific intent to accomplish a forbidden restraint," this is enough to stamp the restraint as unreasonable, in which case the Act is violated if an "appreciable segment" of commerce is affected. There it was pointed out that in the *Yellow Cab* case (since such case went up following the granting of a motion to dismiss) the Court accepted as true the complaint's allegation that defendants had combined and conspired to restrain with the intent and purpose of monopolizing; thus in the *Yellow Cab* case there was clearly an unreasonable restraint, and all that was necessary to bring the case within the Act was to show that an "appreciable segment" of commerce was affected. This Court said (p. 521):

> "We do not construe our holding in the *Yellow Cab* case to make illegal the acquisition by United States Steel of this outlet for its rolled steel without consideration of its effect on the opportunities of other competitor producers to market their rolled steel.
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> * * * * * * * *

(p. 522):

> "*In the complaint* [in the *Yellow Cab* case] *the government charged that the defendants had combined and conspired to effect the restraints in question with the intent and purpose of monopolizing the cab business in certain cities, and on motion to dismiss that allegation was accepted as true.* Where a complaint charges such an unreasonable restraint as the facts of the *Yellow Cab* case show, the amount

of interstate trade affected is immaterial in determining whether a violation of the Sherman Act has been charged. *A restraint may be unreasonable either because a restraint otherwise reasonable is accompanied with a specific intent to accomplish a forbidden restraint or because it falls within the class of restraints that are illegal per se.* For example, where a complaint charges that the defendants have engaged in price fixing,[60] or have concertedly refused to deal with non-members of an association,[61] or have licensed a patented device on condition that unpatented materials be employed in conjunction with the patented device,[62] then the amount of commerce involved is immaterial because such restraints are illegal *per se*. *Nothing in the Yellow Cab case supports the theory that all exclusive dealing arrangements are illegal per se.*

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(p. 524):

"*Exclusive dealings* for rolled steel between Consolidated and United States Steel, *brought about by vertical integration or otherwise, are not illegal, at any rate until the effect of such control is to unreasonably restrict the opportunities of competitors to market their product.*

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[60]Citing *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150.

[61]Citing *Associated Press v. United States*, 326 U. S. 1; *Eastern States Retail Lumber Dealers' Association v. United States*, 234 U. S. 600; *Montague & Co. v. Lowry*, 193 U. S. 38. See *Fashion Originators' Guild v. Federal Trade Comm'n*, 312 U. S. 457.

[62]Citing *International Salt Co. v. United States*, 332 U. S. 392.

"In *United States v. Paramount Pictures*, 334 U. S. 131, we were presented with a situation in which the government charged that vertical integration was illegal under the Sherman Act. We held that control by the major producer-distributors over nearly three-quarters of the first-run theaters in cities with population over 100,000 was not of itself illegal, and we remanded the case to the district court for further findings. In outlining the factors which we considered to be significant in determining the legality of vertical integration, we emphasized the importance of characterizing the nature of the market to be served, and the leverage on the market which the particular vertical integration creates or makes possible. A second test which we considered important in the *Paramount* case was the purpose or intent with which the combination was conceived. When a combination through its actual operation results in an unreasonable restraint, intent or purpose may be inferred; even though no unreasonable restraint may be achieved, nevertheless a finding of specific intent to accomplish such an unreasonable restraint may render the actor liable under the Sherman Act."

Where there is neither a restraint "illegal *per se*" nor a "specific intent to accomplish a forbidden restraint," there must be proof that the restraint is unreasonable *and such proof must amount to something more than a showing that an "appreciable" or even a sizeable segment of commerce is affected.* Certainly in the *Columbia Steel* case an "appreciable" segment of commerce was affected. The

Steel Company obtained for all time to come the exclusive patronage of a Pacific Coast company (p. 523) whose purchases amounted to over $5,000,000.00 annually (p. 537). Yet despite the fact that an "appreciable" segment of commerce was affected, the transaction was upheld because proof of unreasonableness was lacking. The same thing must be true in our case. As in the *Columbia Steel* case, so in our case, there was neither (a) a restraint "illegal *per se*," nor (b) a "specific intent to accomplish a forbidden restraint." Therefore the fact alone that an "appreciable" or even a sizeable segment of commerce was affected was not enough to spell illegality.

(A) IN OUR CASE THERE WAS NO RESTRAINT WHICH WAS "ILLEGAL PER SE."

In our case there was:

(a) No conspiracy or combination.

(b) No price fixing or price control or price discrimination or attempt at anything of that sort, as in *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150.

(c) No concerted refusal to deal with non-members of an association, or boycott, as in *Associated Press v. United States*, 326 U. S. 1; *Eastern States Retail Lumber Dealers' Assn. v. United States*, 234 U. S. 600; *Montague & Co. v. Lowry*, 193 U. S. 38; or *Fashion Originators' Guild v. Federal Trade Comm'n*, 312 U. S. 457.

(d) No contract provision tying an obligation to purchase an unpatented article to the obligation to purchase a patented article as in *International Salt Company v. United States*, 332 U. S. 392.

(e) No monopoly or monopoly power, as in *American Tobacco Co. v. United States*, 328 U. S. 781; *United States v. Griffith*, 334 U. S. 100; or *Schine Theatres v. United States*, 334 U. S. 110.

In our case the government was attacking a type of contract which has been in common use for generations, which serves a beneficial purpose, and has been held to be intrinsically legal and sanctioned by public policy.[63] Con-

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[63] *Piek Mfg. Co. v. General Motors Corp.*, 299 U. S. 3 (1936); *Federal Trade Commission v. Sinclair Co.*, 261 U. S. 463 (1923); *Twin City Co. v. Harding Glass Co.*, 283 U. S. 353 (1931); *Wilder Mfg. Co. v. Corn Products Ref. Co.*, 236 U. S. 165 (1915); *Restatement of Contracts*, sec. 516.

A "requirements" contract involving raw product *for one-third of the pink-tinted eyeglass lenses sold in the United States* was upheld under the Sherman Act in *United States v. Bausch & Lomb Co.*, 45 Fed. Supp. 387 (N. Y. 1942), and this holding was affirmed by an equally divided Court in 321 U. S. 707, 719. By this contract Soft-Lite, a national distributor of one-third of all pink-tinted lenses agreed with Bausch & Lomb, a manufacturer, to buy all its requirements of pink-tinted glass from Bausch & Lomb, and the latter agreed not to sell any of such glass to others.

Petroleum products contracts with retail gasoline dealers like those here involved have been held *not* to be in restraint of trade: *Associated Oil Co. v. Myers*, 217 Cal. 297, 18 P. 2d 668 (1933); *Cantrell v. Knight* (Mo. App.), 72 S. W. 196 (1934); *Quincy Oil Co. v. Sylvester*, 238 Mass. 95, 130 N. E. 217 (1921); *Cox, Inc. v. Humble Oil Refining Co.* (Tex. Com. App.), 16 S. W. 2d 285 (1929); *Wiseman v. Dennis*, 156 Va. 431, 157 S. W. 716 (1931); *McQuaig v. Seaboard Oil Co.*, 96 Fla. 275, 118 So. 424 (1928).

The widespread use of "requirements" contracts as a reasonable business practice is demonstrated by the numerous cases before the courts in which such contracts have been interpreted and enforced. Typical of such cases are the following: *Fort Wayne Corrugated Paper Co. v. Anchor Hocking Glass Corp.*, 130 F. 2d 471 (C. C. A. 3, 1942) (5-year requirements of paper boxes); *United States v. Purcell Envelope Co.*, 249 U. S. 313 (1919) (4-year require-

tracts by which one party agrees to buy all of his "requirements" of a given commodity from a single supplier have been a familiar feature of industrial and commercial dealings for many years. The Federal government appar-

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ments of envelopes for post office department); *Crane Ice Cream Co. v. Terminal etc. Co.*, 147 Md. 588, 128 Atl. 280 (1925) (3-year requirements of ice); *Doxed v. Hercules Powder Co.*, 66 Colo. 302, 181 Pac. 767 (1919) (2-year requirements of blasting powder); *Washington Chocolate Co. v. Canterbury Candy Makers*, 18 Wash. 2d 79, 138 P. 2d 495 (1945) (5-year requirements of chocolate); *Knowles Foundry Co. v. National Plate Glass Co.*, 301 Ill. App. 128, 21 N. E. 2d 913 (1939) (2-year requirements of runner bars for manufacture of plate glass); *Goldschmidt & Loewenick Inc. v. Diamond State Fibre Co.*, 186 App. Div. 688, 174 N. Y. S. 800 (1919), *appeal dismissed* 230 N. Y. 621 (1921) (1 year and 3½ months requirements of fibre); *Northern Iowa Gas & Electric Co. v. Luverne*, 257 Fed. 818 (Iowa, 1919) (20-year requirements of electricity); *Medder v. Town of Sibley*, 143 Wis. 545, 128 N. W. 72 (1924) (20-year requirements of electricity); *Montgomery Traction Co. v. Montgomery Light & Power Co.*, 229 Fed. 672 (C. C. A. 5, 1916) (15-year requirements of electricity); *Southwest Natural Gas Co. v. Oklahoma Portland Cement Co.*, 102 F. 2d 630 (C. C. A. 10, 1939) (15-year requirements of natural gas); *Potts v. Mathieson Alkali Works*, 165 Va. 196, 181 S. E. 521 (1935) (10-year requirements of coal); *Elk Refining Co. v. Falling Rock Cannel Coal Co.*, 92 W. Va. 479, 115 S. E. 431 (1922) (10-year requirements of natural gas); *City of Holton v. Kansas City Power & Light Co.*, 135 Kan. 58, 9 P. 2d 675 (1932) (10-year requirements of electricity); *Helena, etc. R. R. Co. v. Northern Pacific R. Co.*, 57 Mont. 93, 186 Pac. 702 (1920) (5-year requirements of electricity); *Griffin v. Oklahoma Natural Gas Corp.*, 37 F. 2d 545 (C. C. A. 10, 1930) (5-year requirements of natural gas); *Boehmy & Rauch Co. v. Lorimer*, 221 Mich. 372, 191 N. W. 8 (1922) (4 years, 9½ months requirements of coal); *Butler Exchange Co. v. Fess Rotary Oil Burner Co.*, 125 Atl. 360 (R. I. Supreme Ct., 1924) (3 years, 8 months requirements of fuel oil); *A. W. Hinkel Dry Goods Co. v. Wichison Natural Gas Co.*, 64 F. 2d 881 (C. C. A. 10, 1933) (3-year requirements of natural gas); *Willapa Elec. Co. v. Dunns Construction Co.*, 168 Wash. 416, 12 P. 2d 609 (1932) (3-year requirements of electricity); *Jackson Hill Coal & Coke Co. v. Merchant's H. & L. Co.*, 193 Ind. 422, 140 N. E. 532 (1923) (2-year requirements of coal); *Dockson Gas Co. v. S. & W. Constr. Co.*, 12 So. 2d 847 (1943) (2 seasons requirements of gas); *In re United Cigar Stores*, 8 Fed. Supp. 243, 72 F. 2d 673 (C. C. A. 2, 1934) (10-year requirements of ice cream); *McMichael v. Price*, 177 Okla. 186, 58 P. 2d 549 (1936) (10-year requirements of sand).

ently uses "requirements" contracts.[64] They serve a beneficial purpose in assuring an adequate supply to meet future needs, where over the future such needs will be variable and unpredictable. *This is peculiarly true of a retail gasoline dealer.* He must have the present assurance of an adequate future supply. Yet he cannot predict with certainty what he will require over a future period, and he does not have storage space for a supply which will satisfy future needs for more than a few days.

During the trial the District Court stated that in its opinion the "requirements" contracts were not *per se* illegal; that their legality or illegality under the anti-trust laws could be ascertained only by examining their effect upon commerce. [R. 840, 846, 847.] There was no finding that the "requirements" contracts were "illegal *per se*," and this was not stated as one of the District Court's conclusions of law.

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[64] See U. S. Standard Form No. 32 (Revised) and General Conditions, Revised October 7, 1946, Treasury Department Procurement Division. In these General Conditions the following is prescribed as one of the conditions of a regular supply contract:

"3. Scope of Contract. Supplies will be ordered from time to time in such quantities as may be needed. *As it is impossible to determine the precise quantities of different kinds of articles and materials described in the Specifications and Proposals for Supplies that will be required during the contract term, each bidder whose bid is accepted will be obligated to deliver all supplies of the kind contracted for that may be ordered during the contract term.* The statements as to money value of previously reported annual purchases are given for information only, *and will not relieve the agencies and activities* (as noted in the specifications) of the United States and District of Columbia Governments, *for the use of which the contract is made, of the obligation to order from the contractor all articles or services covered by the contract that may, in the judgment of the ordering officers, be needed; and shall not relieve the contractor of his obligation to fill all such orders.*" (C. C. H. Government Contracts Reporter, Vol. 1, par. 18,321.)

If, as pointed out by this Court (*United States v. Columbia Steel Co.*, 334 U. S. 495, 523, 524, 527; *United States v. Paramount Pictures, Inc.*, 334 U. S. 131, 173, 174), exclusive dealing brought about through *"vertical integration"* is not illegal *per se*, the same thing must be true in our case where exclusive dealing is alleged to have been brought about by *"requirements" contracts*. Exclusive dealing brought about by "vertical integration" is *permanent;* exclusive dealing brought about through "requirements" contracts lasts only during the *limited period* that such contracts can be enforced by the supplier.

(B) IN OUR CASE THERE WAS NO "SPECIFIC INTENT TO ACCOMPLISH A FORBIDDEN RESTRAINT."

The only finding concerning "intent" is that the "intent, purpose and effect of the exclusive supply provisions" have been "to prevent the 'independent dealer' operating under said agreements from handling any 'petroleum products,' tires, tubes, batteries and miscellaneous accessories other than those supplied or sponsored by defendants"; that the agreements "are intended to and in practice do confine the independent dealers to defendants' petroleum products and automotive accessories . . . ." [R. 185.]

As long as a "requirements" contract is in force and the dealer faithfully performs the contract by buying his "requirements" from Standard, the dealer will not buy what he requires from a third party to supply the location referred to in the contract. Therefore, when this finding says that the purpose and intent of the exclusive supply provisions has been to prevent the dealers from handling the products of other suppliers, it merely declares an intent which is obvious from the language of the contracts.

But this is simply to declare an intent which would exist in the case of any contract for the sale of goods. Any such contract is *intended to prevent* the buyer from handling the products of other suppliers to the extent that his "requirements" are thus contracted for.

It is one thing to say (as this finding says) that Standard when it made these contracts *intended* to prevent the contracting dealers from buying their "requirements" from anyone but Standard. It would be quite a different thing to say (and this finding does not say) that Standard made these contracts with the *intent* or *purpose* of gaining control over a market or driving out or suppressing competition or doing any other act forbidden by the anti-trust laws.

If what a defendant does, *without more*, is the result condemned by the Act, then such defendant is deemed to have had a specific intent to violate the Act, for he is deemed to have intended the "necessary and direct consequence of what he did." (*United States v. Griffith*, 334 U. S. at 108.) Here what Standard did was to make certain contracts. The only finding as to Standard's purpose or intent is that it intended these contracts to do what on their face they purport to do, *i. e.*, obligate the dealer to buy his "requirements" for a given location from Standard. But the making of these contracts without more was not a result condemned by the Act. As said in the *Columbia Steel* case (334 U. S. at 524): "*Exclusive dealings . . . brought about by vertical integration or otherwise, are not illegal*, at any rate *until the effect of such control is to unreasonably restrict the opportunities of competitors to market their product.*" There is no finding and no evidence that the effect of what Standard

did was to unreasonably restrict the opportunities of competitors to market their product.

Beyond doubt U. S. Steel's intent in acquiring Consolidated Steel in the *Columbia Steel* case was to prevent U. S. Steel's competitors from thereafter selling their products to Consolidated and to confine Consolidated to the purchase of U. S. Steel's products. As said therein (334 U. S. 495, at 523): "A subsidiary will in all probability deal only with its parent for the goods the parent can furnish." Yet this intent of U. S. Steel was held not to be an intent to accomplish a forbidden restraint.

The "intent" required to spell illegality is referred to in *United States v. Paramount Pictures, Inc.*, 334 U. S. 131, in which, as in the *Columbia Steel* case, this Court pointed out that "vertical integration" was not "illegal *per se*." This Court said (pp. 173, 174):

> "Exploration of these phases of the cases would not be necessary if, as the Department of Justice argues, vertical integration of producing, distributing and exhibiting motion pictures is illegal *per se*. But the majority of the Court does not take that view. In the opinion of the majority the legality of vertical integration under the Sherman Act turns on (1) the purpose or intent with which it was conceived, or (2) the power it creates and the attendant purpose or intent. First, it runs afoul of the Sherman Act if it was a *calculated scheme to gain control over an appreciable segment of the market and to restrain or suppress competition, rather than an expansion to meet legitimate business needs. United States v. Reading Co.*, 253 U. S. 26, 57; *United States v. Lehigh Valley R. Co.*, 254 U. S. 255, 269-270. Second, a vertically integrated enterprise, like other aggregations of business units (*United States v. Aluminum*

> *Co. of America*, 148 F. 2d 416), will constitute monopoly which, though unexercised, violates the Sherman Act provided a power to exclude competition is coupled with a purpose or intent to do so."

In our case there was neither finding nor evidence that Standard's practice of employing "requirements" contracts was conceived as a *"calculated scheme to gain control"* or *"to restrain or suppress competition, rather than an expansion to meet legitimate business needs,"* or that there was any monopoly contemplated or achieved, or that there was any "power to exclude competition . . . coupled with a purpose or intent so to do." The evidence was all to the contrary.

The evidence shows that in the Western area the uniform practice, not only of dealers in Standard's products, but of *all retail gasoline dealers*, was to handle the gasoline of a single supplier. "Split-pump" stations (*i. e.* stations handling the gasoline of more than one supplier) represent only 1.6% of the total retail outlets in that area. [R. 1062, 1763-1777, 1064.] Compelling reasons for the growth of this practice of single-line handling were the dealers' own preference, the danger of substitution, and the added cost of serving "split-pump" accounts (see page 16, and footnote 17 herein).

This evidence showing the reasons for single-line handling was uncontradicted. These reasons disclose the intent which prompted the use of "requirements" contracts. They were legitimate business reasons. There was no evidence showing any other reason for the adoption of "requirements" contracts. Certainly there was no evidence showing that their use came about as a result of an intent to gain control of the market or to restrain or suppress competition. Nor was there any finding of fact to that effect.

(3) Applying the Test of Presence or Absence of Prejudice to the Public Interest, the District Court Should Have Considered and Weighed the Competitive and Economic Factors Which It Disregarded.

Consider first the uncontradicted evidence dealing with competitive and economic factors which was received but disregarded by the District Court.

This evidence was material on the issue of the "reasonableness" of the alleged restraint, and the issue whether the effect of the contracts was to substantially lessen competition or tend to create monopoly.

In a case of this character, where there is neither a restraint "illegal *per se*," nor an "intent to accomplish a forbidden restraint," a factual inquiry of broad scope is required—an inquiry in which the government has the burden of making *"a definite factual showing of illegality."*[65]

The breadth of this factual inquiry is emphasized in *Chicago Board of Trade v. United States*, 246 U. S. 231, 238:

> But the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. *Every agreement concerning trade, every regulation of trade, restrains.* To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. *To determine that*

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[65] *Standard Oil Co. v. United States*, 283 U. S. 163, 179 (1931); *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 377 (1933).

question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy; the purpose or end sought to be attained, are all relevant facts."

This was followed in *Appalachian Coals, Inc. v. United States*, 288 U. S. 344 (1933), wherein it was said (p. 361):

"The question of the application of the statute is one of intent and effect, and is not to be determined by arbitrary assumptions. *It is therefore necessary in this instance to consider the economic conditions peculiar to the coal industry, the practices which have obtained, the nature of defendant's plan of making sales, the reasons which led to its adoption, and the probable consequences of the carrying out of that plan in relation to market prices and other matters affecting the public interest in interstate commerce in bituminous coal.*"

The importance of this factual inquiry—as distinguished from a solution of the case solely upon an "appreciable segment" of commerce theory—is pointed out in *United States v. Columbia Steel Co.*, 334 U. S. 495. There, as already pointed out, this Court declared (p. 523) that "nothing in the *Yellow Cab* case supports the theory that all exclusive dealing arrangements are illegal *per se*," and (p. 524):

"The legality of the acquisition by United States Steel of a market outlet for its rolled steel through the purchase of the manufacturing facilities of Con-

solidated depends not merely upon the fact of that acquired control *but also upon many other factors. Exclusive dealings* for rolled steel between Consolidated and United States Steel, brought about by vertical integration or otherwise, *are not illegal, at any rate until the effect of such control is to unreasonably restrict the opportunities of competitors to market their product.*"

So in our case, legality of the "exclusive dealings" depends "*not merely upon the fact of . . . acquired control, but also upon many other factors,*" which the District Court disregarded. "Exclusive dealings" brought about by the "requirements" contracts *are "not illegal, at any rate until the effect of such control is to unreasonably restrict the opportunities of competitors to market their product."* No such unreasonable restriction was shown.

Concerning the factual inquiry which must be undertaken, this Court in the *Columbia Steel* case said (p. 527):

> *"In determining what constitutes unreasonable restraint, we do not think the dollar volume is in itself of compelling significance; we look rather to the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, and other characteristics of the market."*[66]

These were the very factors which in our case the District Court disregarded. The District Court in deciding our case should *not* have determined that illegality *is established* by the number of "controlled units" and the

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[66] This appears in that part of the opinion which discusses *horizontal* integration, but the Court stated on the same page that the same considerations apply also to *vertical* integration.

"volume of controlled business." [R. 126.] It should not have inspected Standard's operations in a vacuum. It should have considered *and weighed* the factors emphasized in the above quoted opinion. If these factors were material in the *Columbia Steel* case, surely they were material in our case. In the *Columbia Steel* case the alleged "control" arose from "vertical integration" and was permanent. In our case the alleged "control" arises from "requirements" contracts and lasts only during the limited period that such contracts can be enforced by the supplier.

The District Court's failure to consider and weigh these factors was error.[67]

Consider next the line of inquiry which the District Court excluded.

The evidence so excluded was material on the issue of the "reasonableness" of the alleged restraint and the issue whether the effect of the contracts was to substantially lessen competition or tend to create monopoly.

The evidence so excluded was offered by defendants to show the effect on competition and on the number of existing service stations of the elimination of the "requirements" clauses as well as the changes which would occur in the over-all competitive picture, the cost of distribution, and the effect on dealers and the public, if, as a result of such elimination, a "split-pump" system became general. [R. 1141-1144.] The District Court went further. It stated that it would not "allow any testimony regarding the *effect of this arrangment* [*i.e.* the "requirements" contracts] *on prices*" [R. 1138]: that the "fact that it [*i.e.* the practice employing these contracts] may result in

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[67]Error is specifically assigned. [R. 1867.]

economic benefit or its abandonment might result in economic loss is not material under the decisions of the Supreme Court . . . ." [R. 1144.] The District Court had stated previously that "any advantages . . . to the dealer and indirectly to the public from the arrangement . . . . is not a proper subject of inquiry, ..." [R. 1088.]

Certainly application of the prejudice to the public interest test required consideration of the evidence which the District Court excluded—evidence as to the "effect on competition of the elimination of the 'requirements' clauses"; evidence that what the government was seeking to accomplish would actually result in elimination of competition by an increase in company-operated service stations and the promotion of dealer-operated chains of service stations; evidence as to how the elimination of the "requirements" clauses would affect "the over-all competitive picture" and whether this would mean an increase or decrease in the number of existing service stations, or "give the more prominent suppliers a competitive advantage"; and evidence as to the economic aspects of the "split-pump" distribution system as compared with the prevailing single-supplier system, the cost of one as compared with the other, and the additional economic burden to be borne by the public if the former system supplanted the present system.

Of course the District Court's exclusion of this evidence was consistent with its view that the government was entitled to a decree *solely* upon a showing that an "*appreciable segment*" of commerce, was affected. But, as pointed out above, this case ought not to have been decided solely by resort to an "appreciable segment" of commerce theory.

The exclusion of this evidence was certainly not required by the decisions of this Court under the facts of our case. This was evidence which was peculiarly relevant and material to that broad factual inquiry necessary to determine the presence or absence of prejudice to the public interest from the practices complained of.

The exclusion of this evidence was error.[68]

The District Court was required to consider "the facts peculiar to the business . . . its condition before and after the restraint was imposed; the nature of the restraint *and its effect*, actual or probable." (*Chicago Board of Trade v. United States*, 246 U. S. 231, 238.) It was required to consider "the economic conditions peculiar to the . . . industry . . . and the *probable consequences of the carrying out of that plan in relation to market prices and other matters affecting the public interest* . . ." (*Appalachian Coals, Inc., v. United States*, 288 U. S. 344, 361.) Its duty required recognition of the fact that in "the cases considered by this Court since the *Standard Oil* case in 1911 . . . in general restraints upon competition have been condemned only when their purpose or effect was to *raise or fix the market price* . . . that it is said that the restraints, actual or intended, prohibited by the Sherman Act are only those which are so substantial *as to affect market prices*" (*Apex Hosiery Co. v. Leader*, 310 U. S. 469, 500); that "it is only when a restriction of production either inevitably *affects prices*, or is intended to do so, that it violates sec. 1 of the Act." (*United States v. Aluminum Co. of America*, 148 F. 2d 416, 424 (C. C. A. 2).)

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[68]Error is specifically assigned. [R. 1872-1875.]

In *Standard Oil Co. v. United States*, 283 U. S. 163, the question presented under secs. 1 and 2 of the Sherman Act was the "effect" of certain contracts between large oil companies cross-licensing patents relating to "cracking" processes and fixing and agreeing (p. 168) upon a division of royalties from licensees under such patents. Holding (p. 176) that "no monopoly, or restriction of competition . . ." had been proved, Mr. Justice Brandeis speaking for the Court pointed out (pp. 175, 176, 177) that while defendants controlled 55% of the total cracking capacity (the remainder being distributed among 21 independents), "cracked" gasoline production was about 26% of the total gasoline production; "cracked" gasoline and straight run gasoline were sold interchangeably; and "*defendants could not effectively control the supply or fix the price* of cracked gasoline . . . unless they could control, through some means, the remainder of the total gasoline production from all sources. Proof of such control is lacking." The opinion states (p. 177) that "Evidence of the total gasoline production, by all methods, . . . is either missing or unsatisfactory in character. The record does not accurately show even the total amount of cracked gasoline produced, or the production of each of the licensees, or competing refiners. . . . And (p. 182) the court [below] entirely disregarded not only the fact that the manufacture of the cracked is only a part of the total gasoline production, but also the evidence showing active competition among the defendants themselves and with others."

Thus this Court emphasized the importance of economic and competitive factors which might indicate whether defendants could effectively control the supply or fix prices; pointed to the absence of proof which would resolve this

question; and plainly indicated that the trial court had disregarded the over-all competitive picture. The same comment would be appropriate in our case.

To determine in our case whether there was injury to the public interest, the District Court should have considered and weighed the competitive and economic factors which is disregarded.

As trier of the facts the District Court applied an erroneous rule of law—the "appreciable segment" of commerce theory. *Defendants below were entitled to have the facts considered and weighed on a correct rule of law* —the "detriment to the public interest" theory. Unless the government can show that no conclusion from the facts (both evidence received and evidence excluded) could reasonably be drawn which on the correct theory would have warranted a judgment in favor of defendants, the judgment should be reversed. *Indiana Farmer's Guide v. Prairie Farmer*, 293 U. S. 268, 281 (1934) is directly in point.[69]

Here the government cannot show that no trier of fact applying a correct theory could reasonably have come to a conclusion favorable to Standard.

Even if we disregard the evidence which was excluded and take only the evidence in our record, the conclusion is inescapable that there was no unreasonable restraint. This conclusion is developed in the argument which follows.

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[69] There the lower court applied an erroneous rule of law to the facts. The parties who obtained the judgment below failed to show that the judgment was right despite the "untenable grounds" upon which it was predicated. This Court accordingly reversed the judgment.

III.

THE DISTRICT COURT ERRED IN CONCLUDING UPON THE EVIDENCE RECEIVED THAT THERE WAS A VIOLATION OF EITHER THE SHERMAN ACT OR THE CLAYTON ACT.

(1) The "Requirements" Contracts Are Not Within the Purview of the Clayton Act.

Sec. 3 of the Clayton Act makes it unlawful for any person to make a contract for the sale of goods "on the condition, agreement, or understanding" *that the purchaser "shall not use or deal in the goods . . . of a competitor"* where the effect of such contract may be "to substantially lessen competition or tend to create a monopoly in any line of commerce."

The "requirements" contracts do not fall within this language. Under each of them the dealer agrees to purchase from Standard his "requirements" for resale *at a specified service station.* He does not agree to buy from Standard *all* his "requirements" wherever they may be needed. Under this type of contract the dealer may install a competitive gasoline pump next door, or across the street, or six blocks away. He does not purchase on the "condition, agreement, or understanding" that he will "not use or deal in the goods . . . of a competitor."

Federal Trade Comm. v. Sinclair Co., 261 U. S. 463 (1923), is in point. There it was held lawful under sec. 3 of the Clayton Act for a service station dealer to agree to buy exclusively from Sinclair all the gasoline he required for resale *from a specified pump.* If a contract for exclusive dealing *with respect to gasoline to be resold from a specified pump* is not within the statute, a contract for

exclusive dealing *with respect to gasoline to be resold from a specified service station* should not be held to be within the statute.

It is no reply to this argument to urge that a dealer may presently have only one service station to which his contract with Standard is made applicable, and that he would have to acquire another location in order to handle the products of one of Standard's competitors. Evidence is lacking that each dealer had only one location. Also, in the *Sinclair* case the dealer would have had to procure and install a new pump in order to handle the products of one of Sinclair's competitors.

Moreover, it is important to observe that in the *Sinclair* case, the restriction upon the station operator's dealing with a competitor was, as a practical matter, quite as far reaching as in our case, for in the *Sinclair* case the *Commission found that only a small proportion of Sinclair's lessees required or used more than one pump.*[70] Thus in the *Sinclair* case the practical effect of the agreement was to confine a large proportion of the dealers to the purchase of only Sinclair gasoline at the station of each such

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[70]Thus in the *Sinclair* case the Commission found (see 261 U. S. at 471):

"4. That the contracts mentioned in the preceding paragraph also provide that such equipments shall be used by the lessee only for the purpose of holding and storing the respondent's petroleum products; that a small proportion of such lessees handle similar products of respondent's competitors; *and that only a small proportion of such lessees as handle similar products of respondent's competitors require or use more than a single pump outfit in the conduct of their said business; that the practice of leasing such devices requires a large capital investment; that many competitors of respondent do not possess sufficient capital and are not able to purchase and lease devices as respondent does as aforesaid, partly by reason of which such competitors have lost numerous customers to respondent;* that the effect of the practice of leasing by contract

dealer. In our case the "requirements" contracts have no wider effect.

The rule of the *Sinclair* case must be this: When sec. 3 of the Clayton Act forbids a condition, agreement or understanding that the purchaser "shall not . . . deal in the goods . . . of a competitor," the thing forbidden is some condition, agreement or understanding that the purchaser will not deal in a competitor's goods *anywhere or at all*—that conditions, agreements, or understandings falling short of this and forbidding a use or dealing in a competitor's goods at a specified gasoline station or forbidding any other *limited use or dealing* are not prohibited.

If this is not the correct rule and a restriction upon even a limited use or dealing is prohibited, the scope of sec. 3 is extended far beyond anything which could have been intended by Congress—extended to every contract for the sale of goods in interstate commerce, provided such contract substantially lessens competition or tends to create monopoly.

In the foregoing we have been discussing simply what contracts fall within the language of the first part of

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such equipments, where such contracts contain the said provision restricting the use of the same to the storage and handling of respondent's products as aforesaid, may be to substantially lessen competition and tend to create for the respondent a monopoly in the business of selling petroleum products."

And this Court took cognizance of this finding, for we find in the opinion the following (see 261 U. S. at 473):

"But counsel for the Commission insist that inasmuch as lessees generally—except garage men in the larger places—will not encumber themselves with more than one equipment, the practical effect of the restrictive covenant is to confine most dealers to the products of their lessors; and we are asked to hold that, read in the light of these facts, the contract falls within the condemnation of the statute."

sec. 3, *i. e.*, what is meant by the reference therein to a condition, agreement, or understanding that the purchaser "shall not . . . deal in the goods . . . of a competitor." We believe that the foregoing demonstrates the error of the District Court in concluding that Standard's "requirements" contracts contained any such condition, agreement, or understanding. Such contracts were for supply *at a limited location*.[71]

The District Court also erred in concluding that the "requirements" contracts were vulnerable to the further requirement of sec. 3 of the Clayton Act, *i. e.*, erred in concluding that the contracts have the effect of *substantially lessening competition or tending to create a monopoly*. This error is pointed out in the argument which follows.

(2) The "Requirements" Contracts Have Been in Use for so Long a Period That Their Effect Can Be Evaluated Without Speculating as to Their "Probable" or "Possible" Future Effect.

As pointed out in the opening Statement, "requirements" clauses have been in use by Standard in the Western area since about 1938.[72] Practical experience has demonstrated their "effect." Granted that the Clayton Act seeks to reach "agreements embraced within its sphere in their incipiency;"[73] no effort was made to attack these contracts in their incipiency. The attack upon them in this case

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[71]Error is specifically assigned. [R. 1868.]

[72]Not only has Standard used these "requirements" clauses for many years, but Standard's principal competitors have for many years engaged in similar practices. See page 23 and footnote 23 herein.

[73]*Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 356 (1922).

was the first attack, and it came after they had been in use for about nine years.

Hence speculation as to the "probable" or "possible"[74] future effect of the clauses is unnecessary. Their "effect" has been amply demonstrated by long continued use.

The District Court seems to have adopted this view of the matter: In its supplemental opinion it said: *"In the present case*, as appears from the original opinion, *we are dealing not with probabilities but with actualities."* [R. 165.]

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[74]Under sec. 3 of the Clayton Act it has been held that Congress by declaring illegal agreements the effect of which "may be" to substantially lessen competition, did not intend "to prohibit the mere possibility of the consequences described"; that it "was intended to prevent such agreements as would under the circumstances disclosed *probably* lessen competition, or create an actual tendency to monopoly." *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 356 (1922).

The same rule of *"probability"* was applied in *Federal Trade Comm. v. Sinclair Refining Co.*, 261 U. S. 463, 475 (1923).

The same rule of *"probability"* was stated in *International Shoe Company v. Federal Trade Commission*, 280 U. S. 291, 298 (1930) dealing with identical language in sec. 7 of the Clayton Act.

The opinion in *Corn Products Co. v. Comm'n*, 324 U. S. 726 (1945), dealing with identical language in sec. 2(a) of the Clayton Act, contains a statement (p. 738) approving the rule of *"probability"* and quoting from the *Standard Fashion* case; also later language (p. 742) where the term *"possibility"* is employed.

The latter language is quoted in the majority opinion in *Federal Trade Comm'n v. Morton Salt Co.*, 334 U. S. 37, 46 (1948), which likewise dealt with sec. 2(a) of the Clayton Act, but with a footnote stating that such language is to be read in the light of the earlier statement in the *Corn Products* case which announced the rule of *"probability."* Mr. Justice Jackson and Mr. Justice Frankfurter in their separate opinion in the *Morton Salt* case are of the view that the majority opinion departs from the rule of *"probability"* and adopts a rule of *"possibility,"* and on this feature of the case disagree with the majority opinion.

(3) The "Requirements" Contracts Are Not an Unreasonable Restraint and Have Not Had the Effect of Substantially Lessening Competition or Tending to Create Monopoly.

Even without reference to the evidence which was excluded, and considering solely the record as it stands, there is no support whatever for the District Court's conclusion that the "requirements" contracts were an unreasonable restraint, or its conclusion that they substantially lessened competition and tended to create monopoly.[75]

Standard cannot and does not force contracts on dealers. Standard does not sell an article which it monopolizes by patent or otherwise. It does not sell an article which the dealer must buy from Standard or go without. Thus, the dealer is free to select his supplier—either Standard or one of its numerous competitors. This is true with respect to the several products involved.

The dealer is free to buy his *gasoline* from Standard or from any one of a large number of other gasoline suppliers. [R. 1074, 1316, 212.] There are 80 such suppliers in the Western area [R. 1675, 1676, 939] where Standard sells to dealers 6.7% of the taxable gasoline gallonage. [R. 1656, 939.] To get Standard's gasoline the dealer does not have to make any contract whatever with Standard. He can buy gasoline from Standard on open account[76] without a contract for any period he chooses, and then switch to some other supplier. [R. 241, 242, 265.] True, Standard will not continue to sell him gasoline

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[75]Error is specifically assigned. [R. 1867.]

[76]On March 12, 1947, 742 dealers were doing this. [R. 1316, 212.]

if he buys gasoline from another supplier for the same station [R. 242, 269, 1127], but this is substantially the universal practice in the Western area, where out of 36,500 outlets only 1.6% are "split-pump" outlets. [R. 1062, 1763-1777, 1064.] If the dealer signs one of Standard's Dealer Agreements, he can cancel such agreement at the end of the first 6 months or at the end of any 6 months period thereafter [R. 1302, 211] and switch his patronage to another supplier.

The dealer is free to buy his *lubricating* oil from Standard or from any one of a large number of suppliers. [R. 1074, 1075.] There are at least 69 such suppliers in the Western area [R. 1864, 1865, 1148] where Standard sells to dealers only 5% of the lubricating oil. [R. 1660, 939.] To get Standard's lubricating oil the dealer does not have to make any contract whatever with Standard. He can buy lubricating oil from Standard without a contract for such period as he chooses, and then switch to some other supplier. [R. 1074, 1075.] Standard will sell him lubricating oil without a contract of any kind even though his station handles the gasoline, or the tires, tubes or batteries furnished by another supplier. [R. 1074, 1075.] And, as already noted, if the dealer elects to sign one of Standard's Dealer Agreements, he can cancel such agreement at the end of any 6 months period. [R. 1302, 211.]

The dealer is free to buy his *tires, tubes or batteries* from Standard or from any one of a large number of suppliers. There are many[77] such suppliers in the Western area, where Standard sells to dealers only 2% of the

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[77]Companies competing with Standard *in the sale of gasoline* through retail dealers promote 27 lines of tires and 28 lines of batteries. [R. 1069.] But tires and batteries are sold at many retail outlets other than retail gasoline outlets.

tires and 1.8% of the batteries. [R. 1664, 1668, 939.] If he wants to handle Standard's tires, tubes and batteries the dealer will have to execute one of Standard's Dealer Agreements TBA, which also requires him to purchase at the particular location Standard's petroleum products. [R. 1308, 211.] But this is not prohibited by the Act in the absence of "monopoly or combination." (*Federal Trade Comm. v. Gratz*, 253 U. S. 421.)[78] Moreover, if the dealer signs a Dealer Agreement TBA, he can cancel such agreement at the end of 6 months or at the end of any 6 months period thereafter [R. 1310, 211] and switch his patronage to another supplier.[79] If the dealer wants to handle Standard's gasoline or lubricating oil or both of these products, but wants to handle the tires, tubes or batteries of some other supplier, he is perfectly free to do so, and in such case, as already noted, he can purchase Standard's gasoline and lubricating oil, or either one of them, with or without a contract. [R. 1075.]

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[78] In that case, Gratz, engaged in the practice of selling steel ties and jute bagging for baling cotton, adopted the practice of refusing to sell ties unless the prospective purchaser thereof would also buy from Gratz the bagging to be used with the number of ties purchased. This practice was upheld, the Court declaring (p. 428):

"All question of monopoly or combination being out of the way, *a private merchant, acting with entire good faith, may properly refuse to sell except in conjunction, such closely associated articles as ties and bagging.* If real competition is to continue, the right of the individual to exercise reasonable discretion in respect of his own business methods must be preserved."

[79] The only agreement form (excluding sublcases) used by Standard which does not contain this 6 months termination clause is the Petroleum Products and Equipment Agreement. [R. 1305, 211.] The obvious reason for this is that under the latter agreement Standard obligates itself to undertake the cost of installing equipment—a cost which it would not assume without some assurance of continued relations for a definite period. Of the "requirements" contracts outstanding, the Petroleum Products and Equipment Agreements represent approximately 19%. [R. 1313, 212.]

(A) THERE WAS NO UNREASONABLE RESTRAINT.

The only "restraint" charged was restraint of that segment of the market represented by the dealers with whom Standard had "requirements" contracts.[80]

Monopoly of petroleum products, tires, batteries and accessories *generally* was not charged—merely monopoly of the business of the outlets with which Standard had "requirements" contracts.

The "requirements" contracts have been in use for about nine years. The facts demonstrate that their "effect" has *not* been "to unreasonably restrict the opportunities of competitors to market their product."[81]

The absence of unreasonable restraint is shown by a comparison of our case and *United States v. Columbia Steel Co.*, 334 U. S. 495.

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[80] Thus during the trial Mr. Dixon, who was in charge of the government's case, said: "I felt from some remarks Your Honor had made that perhaps I had been remiss in presenting the position of the Government on *the competition that we claim had been restricted. . . . . It is the competition for this market that Standard has with these dealers. That is the only competition that we claim is restricted, in any sense of the term, Your Honor.*" [R. 850, 851.]

Mr. Dixon also stated: ". . . we are not charging Standard here of having a monopoly of all of the petroleum business or all of the automotive accessory business in the seven western states at all. But we do contend . . . that as to the outlets subject to these contracts that they do have such a monopoly. . . ." [R. 1164.]

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"We are, however, not charging Standard here with having a monopoly of all of the business or a monopoly of the petroleum business or of the automotive accessory business, but we do charge that they have monopolized by these contracts *an appreciable segment* of that business in this area." [R. 1186.]

[81] *United States v. Columbia Steel Co.*, 334 U. S. 495, 524 (1948).

In our case Standard's gasoline sales through retail-dealer outlets were 6.7% of the taxable gasoline gallonage [R. 1656, 939];[82] its dealer sales of lubricating oil were 5% of the total [R. 1660, 939], of tires 2% of the total [R. 1664, 939], and of batteries 1.8% of the total [R. 1668, 939.]

In the *Steel case* U. S. Steel was the country's largest producer of rolled steel products producing during 1937 to 1941 something like 33⅓% of the country's rolled steel products with average annual sales of $1,000,000,000 (p. 500).

In our case through "requirements" contracts Standard obtained *during the life of such contracts only* the exclusive patronage of 5197 scattered dealers at specified locations. [R. 1515, 212.] Their annual purchases from Standard aggregated $65,846,412. [R. 180.]

In the *Steel case*, through purchase of Consolidated Steel ("vertical integration") U. S. Steel obtained *for all time to come* the exclusive patronage of Consolidated (p. 523). The latter's purchases of rolled steel products in 10 years had exceeded 2,000,000 tons (p. 508), and amounted to over $5,000,000.00 annually (p. 537); and were 3%[83] of the demand for such products in the eleven-state area found to be the competitive area.

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[82]In the populous Los Angeles basin and San Francisco bay areas Standard's percentages were 2.45% and 5.3% respectively. [R. 1649, 1652, 910.]

[83]The District Court misread the opinion of this Court in the *Columbia Steel* case. Commenting on the latter opinion the District Court in its Supplemental Opinion said [R. 162]: "In effect, the court rules that Consolidated's acquisition would not have any great effect on the market, in view of the fact that its requirements

In our case the government's contention was that it was illegal restraint to exclude other suppliers from the business of supplying the 5197 dealers at specified locations.

In the *Steel case* the government's contention was that there was "illegal restraint . . . because all manufacturers except United States Steel will be excluded from the business of supplying Consolidated's *requirements* of rolled steel products" (p. 507).

The decision in our case should have been in accord with the decision in the *Steel case, i. e.*, that there was no unreasonable restraint.

Clearly in our case the basic facts, tested by a comparison with the facts in the *Steel case*, show that the "effect" of the "exclusive dealings . . . brought about by" the contracts in question was *not* "to unreasonably restrict the opportunities of competitors to market their product."[84]

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are 'an insignificant fraction of the total market,—*less than ½ of 1%.*'" In this passage thus quoted from this Court's opinion in the *Columbia Steel* case this Court was commenting upon the *appellees' contention* in the *Columbia Steel* case predicated upon a *nation-wide market* (334 U. S. 495, at 508)—a contention this Court *did not adopt*. Thus this Court said (334 U. S. 495, at 527): "We accept as the relevant competitive market the total demand for rolled steel products in the *seven-state area*; over the past ten years Consolidated has accounted for only *3%* of that demand, and if expectations as to the development of the western steel industry are realized, Consolidated's proportion may be expected to be lower than that figure in the future."

[84] *United States v. Columbia Steel Co.*, 334 U. S. 495, 524 (1948).

(B) THERE WAS NO SUBSTANTIAL LESSENING OF COMPETITION.

Assuming, for the purpose of argument only, that the "requirements" contracts were within the purview of the Clayton Act, the government had the burden of making "a definite factual showing of illegality,"[85] *i. e.*, of showing that the effect of the contracts was to substantially lessen competition or tend to create monopoly. If they actually had such effect, one would suppose that it would have been disclosed in nine years, and that the government's proof would show (a) that the number of Standard's competitors had diminished, or (b) that the size and power of its competitors had grown less, or (c) that its competitors had a smaller and smaller proportion of the available customers or volume of business.

There was no such proof. Nor was there any proof that Standard had a monopoly or a tendency toward monopoly or a purpose or intent to monopolize or exert monopoly power. Such evidence as the record contains—and it is uncontradicted—was all to the contrary. It repels any conclusion that there was any substantial lessening of competition or tendency to create monopoly.

The competitive aspects of the picture presented by the proof show no *lessening of competition*. After about nine years during which the "requirements" contracts have been in use [R. 171], Standard has at least 79 other

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[85] *Standard Oil Co. v. United States*, 283 U. S. 163, 179 (1931); *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 377 (1933).

gasoline competitors [R. 1675, 1676, 939], at least 68 other lubricating oil competitors [R. 1864, 1865, 1148], and many[86] tire and battery competitors, and sells in the Western area through dealer outlets 6.7% of the taxable gasoline gallonage [R. 1656, 939], 5% of the lubricating oil [R. 1660, 939], 2% of the tires [R. 1664, 939], and 1.8% of the batteries [R. 1668, 939]. In the most populous areas it was in this competitive position: In the Los Angeles basin area its dealer stations were 3.68% of the total service stations and its gasoline sales were 2.43% of the total gasoline gallonage distributed through all stations, its smaller competitors (exclusive of its six major competitors) having 47.15% of the service stations and supplying 43.60% of the gasoline gallonage. [R. 1649, 910.] In the San Francisco bay area its dealer stations were 6.98% of the total service stations and its gasoline sales were 5.52% of the total gasoline gallonage distributed through all stations, its smaller competitors (exclusive of its six major competitors) having 28.49% of the service stations and supplying 23.94% of the gasoline gallonage. [R. 1652, 910.] Between 1936 and 1946 in the Western area Standard's dealer sales of gasoline increased 58% [R. 1656, 939], but sales of gasoline in the industry in such area increased 64% [R. 1656, 939]; Standard's dealer sales of lubricating oil increased 62% [R. 1660, 939] but sales of lubricating oil in the industry in such area increased 104%. [R. 1660, 939.] A tabulation set out in the opening Statement (page 30 herein) shows from year to year, during the period the "requirements" contracts have been in use,

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[86]Companies competing with Standard *in the sale of gasoline* through retail dealers promote 27 lines of tires and 28 lines of batteries. [R. 1069.] But tires and batteries are sold at many retail outlets other than retail gasoline outlets.

Standard's percentage of the "industry" total sales of gasoline, lubricating oil, tires and batteries. It shows that Standard's dealer sales of gasoline, tires and batteries have not increased proportionately to total sales, and that its dealer sales of lubricating oil have decreased proportionately to total sales over such period.[87]

There was no testimony of any competitor supplier who was forced out of business or whose business advancement suffered as a result of Standard's contracts.[88] There was evidence to the contrary. For example, in the lubricating oil field Pennzoil increased its outlets in 30 years from 2,000 to somewhere between 8,000 and 12,000 [R. 375, 376]; Macmillan sold to 9,000 or 10,000 accounts in 1947 [R. 324]; and Quaker State sold to 4,000 or 5,000 accounts in 15 California counties. [R. 464.]

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[87]In *Pick Mfg. Co. v. General Motors Corp.*, 80 F. 2d 641 (C. C. A. 7, 1935; affirmed in 299 U. S. 3), upholding under sec. 3 of the Clayton Act a form of dealer's contract obligating the dealer to use in the repair of Chevrolet cars only parts manufactured or authorized by Chevrolet, the Court said (p. 644):

"Furthermore, the record shows that *competition* in the sale of replacement parts for automobiles, *instead of growing less has substantially increased through the period during which the provisions complained of have been in force* and, while it may be that competition would have increased more rapidly in the absence of such provisions, *the trial court rightfully concluded that such was not the 'substantial lessening of competition' which the Clayton Act was designed to prevent.*"

[88]The government called 34 witnesses who were lubricating oil, tire, battery and automobile accessory salesmen or the executives of companies handling one or more of these products. Many of them testified to the difficulty or impossibility of selling their products to service station or garage dealers who were under contract with Standard. It also called as witnesses 13 service station dealers who currently handled or had in the past handled Standard's products under contract. Some of these gave testimony indicating that Standard expected its dealers under contract to abide by their contractual obligations and buy their "requirements" from Standard. The testimony of these 47 witnesses was perhaps 60% of the entire volume of oral testimony taken at the trial.

None of this testimony did more than indicate that the dealers were complying with their obligations under their "requirements"

There was uncontradicted evidence that Standard's numerous competitors freely and constantly compete with Standard for the patronage of dealers. The competitor freely seeks new sites in competition with Standard [R. 1065, 1066, 1067], and freely seeks to induce a dealer who is not under contract with Standard or whose contract with Standard has expired[89] to contract with the competitor. [R. 1067, 1068.][90] This activity goes on continuously. The uncontradicted evidence was that other companies competed with Standard in the sale of petroleum products, tires, tubes, batteries and accessories *"very aggressively."* [R. 1065.] To get business away from Standard they installed facilities for the dealers, absorbed rentals, loaned money and sought in "a variety of ways to interest the dealer in switching to other products." [R. 1068.] In the eight or nine years preceding 1947 the

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contracts, *i.e.*, that a given dealer under contract with Standard was buying his "requirements" at a given location from Standard.

The complaints of these salesmen and their employers were no more than the complaints of a salesman who has "lost a customer" to a competitor. These complaints were no different than that which might be made by any salesman who finds that a prospective customer has been "signed up" by a competitor for a supply of goods the salesman had hoped to sell such prospective customer. *If Standard had not used "requirements" contracts but had made contracts with the dealers for definite quantities, the witnesses referred to could have given the same testimony.*

None of this character of testimony touched the question of *gasoline*, and none of these witnesses testified that they couldn't find purchasers for their products.

[89]Standard's Dealer Agreement [R. 1301, 211], Dealer Agreement TBA [R. 1308, 211] and Distributor Agreement [R. 1304A, 211] are terminable *by either party* on 30 days notice at the end of the first 6 months or at the end of any 6 months period thereafter.

[90]Thus, Edward P. McCall, assistant to the vice-president of Tide Water Associated Oil Company [R. 826], when asked on cross-examination by government counsel if his company solicited the business of selling gasoline to any dealer operating a Chevron station, replied: "We endeavor to take the whole station. . . ." [R. 860.]

number of Standard's retail dealer outlets diminished by about 2500. [R. 238, 239.]

These facts show no lessening of competition, substantial or otherwise.

In considering the presence or absence of prejudice to the public interest from the use of these "requirements" contracts, the following additional facts are important and undisputed.

"Experience has proven" that there is a definite danger of substitution of products if a service station handles the petroleum products of more than one supplier. This is especially true in the case of gasoline.[91] There was uncontradicted testimony that dealers handling the gasoline of more than one supplier ("split-pump" dealers) in many instances sold gasoline out of one pump when the customer thought he was buying from another pump. This was the so-called "long-hosing" practice. [R. 1106, 1107.] Dealers also transferred gasoline from one underground tank to another tank. [R 266.] Obviously this was a compelling reason for refusing to sell gasoline to "split-pump" accounts.[92] The uncontradicted evidence was that it was the "primary reason." [R. 1106.]

Experience also showed that dealers "were not favorable" to handling the products of different suppliers, because (a) they didn't have "the merchandising support" of a single supplier, and (b) they didn't have "an assur-

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[91] There was also uncontradicted testimony of the danger of substitution in the case of lubricating oil. [R. 1107.]

[92] As said by this Court in justifying the practice upheld in *Federal Trade Comm. v. Sinclair Refining Co.*, 261 U. S. 463, 475 (1923): "He [the refiner] is also vitally interested in putting his brand [of gasoline] within easy reach of consumers *with ample assurance of its genuineness.*"

ance of supply," where they were handling the products of more than one supplier. [R. 266, 269.]

Delivery costs are higher in the case of a "split-pump" station than in the case of a station handling the gasoline of a single supplier. It costs "from a cent to a cent and a half a gallon more to serve a split-pump account." [R. 266.] This is true because of uncertainty with respect to the quantities to be delivered and "the constant sales followup that is required to maintain representation with that account." [R. 266.][93]

"Split-pump" outlets (*i. e.* dealers handling the gasoline of more than one supplier) have substantially disappeared from the Western area. Out of 36,500 retail outlets in that area in 1947, only 1.6% were "split-pump" outlets. [R. 1062, 1763-1777, 1064.]

Obviously, there were economic factors—quite apart from "requirements" contracts—which were responsible for this result. Obviously it was these economic factors which years ago brought about the use of these "requirements" contracts. This repels any conclusion that these contracts were the result of a "calculated scheme to gain control" of outlets or "restrain or suppress competition." (*United States v. Paramount Pictures, Inc.*, 334 U. S. 131, 174.)

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[93]For a summary of the testimony showing the reasons why suppliers and dealers generally have adopted the single-supplier system, see page 16, and footnote 17 herein.

(C) THERE WAS NO MONOPOLY OR TENDENCY TO CREATE MONOPOLY.

Since sec. 3 of the Clayton Act became law this Court has had occasion to consider the applicability of that section in only eight cases. In five of these cases the practices attacked were held to violate the section; in three the section was held not to have been violated.

In the five cases in which sec. 3 was held to have been violated, the effect of the activities involved was *to create monopoly or enlarge an existing monopoly*. Three of these, the *United Shoe Machinery* case, the *International Business Machines* case and the *International Salt* case, were typical "tying-clause" cases in which a manufacturer, having a patent monopoly in the manufacture of one article, sought to enlarge such monopoly by obligating a lessee of the patented article to purchase something additional.[94] A patent grants a monopoly. If leave to use

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[94] In *United Shoe Machinery Corp. v. United States*, 258 U. S. 451 (1922), the company, according to the finding of the District Court, "*controlled more than 95 per cent*" of the business of supplying shoe machinery. (p. 455.) It leased its *patented* (p. 455) machines with tying-clauses obligating the lessee to use exclusively machinery of certain kinds made by the company or lose its right to use any of the company's machinery, also to purchase supplies exclusively from the company, also to use the company's machines only on shoes on which other operations had been performed by the company's machines, also to take all additional machinery from the company or lose its right to retain the leased machinery, also to pay royalty to the company on shoes operated upon by machines made by competitors, etc. (pp. 456, 457.) The Court said (pp. 457, 458): "When it is considered that the United Company *occupies a dominating position* in supplying shoe machinery of the classes involved, these covenants signed by the lessee and binding upon him effectually prevent him from acquiring the machinery of a competitor of the lessor except at the risk of forfeiting the

the patented article is granted upon condition that the user will buy from the patent owner all unpatented supplies used in or in connection with the patented article, the monopoly enjoyed by the patent owner is enlarged to cover unpatented articles, thus (in the language of sec. 3 of the Clayton Act) tending to create a monopoly in the latter.

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right to use the machines furnished by the United Company, *which may be absolutely essential to the prosecution and success of his business.*"

In *International Business Machines Corp. v. United States*, 298 U. S. 131 (1936), International and Remington Rand, Inc., also a defendant, were the *only manufacturers* of a certain type of *patented* (p. 134) machine. The machine was leased upon condition that the lessee would use in the machine only tabulating cards purchased from the lessor. (p. 135.) This resulted in giving International 81% and Remington Rand 19% of the business in tabulating cards (p. 136), *i.e.*, a complete monopoly of the tabulating card business.

In *International Salt Company v. United States*, 332 U. S. 392 (1947), the company leased *patented* machines (p. 394) for dissolving rock salt and injecting salt into canned products on condition that the lessee purchase from the company all unpatented salt and salt tablets consumed in the leased machines. (p. 394.) The Court said (p. 395): "The appellant's patents confer *a limited monopoly* of the invention they reward. From them appellant derives a right to restrain others from making, vending or using the patented machines. But the patents confer no right to restrain the use of, or trade in, unpatented salt. By contracting to close this market for salt against competition, International has engaged in a restraint of trade for which its patents afford no immunity from the antitrust laws."

In several cases in the lower Federal courts where sec. 3 of the Clayton Act has been held applicable, defendant's contract required the other party to buy from defendant all his supplies used in con-

In our case Standard never had any monopoly, patent or otherwise.

In the fourth case, the *Standard Fashion* case, the manufacturer had no patent monopoly, but by covenants obligating retail dealers not to handle competing products, demonstrated at least a strong tendency to monopoly by controlling 40% of the nation's retail dealers in its

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nection with a patented article obtained from defendant on lease or other arrangement, *i.e.*, tied unpatented articles to patented articles. *Radio Corporation v. Lord*, 28 F. 2d 257 (C. C. A. 3, 1928; cert. den. 278 U. S. 648); *Oxford Varnish Corp. v. Ault & Wiborg Corp.*, 83 F. 2d 764 (C. C. A. 6, 1936); *Philad Co. v. Lechler Laboratories*, 107 F. 2d 147 (C. C. A. 2, 1939); *Landis Machinery Co. v. Chase Tool Co.*, 141 F. 2d 800 (C. C. A. 6, 1944); *Standard Register Co. v. American Sales Book Co.*, 148 F. 2d 612 (C. C. A. 2, 1945).

Monopoly may likewise be furthered where the commodity to which the tying-clause is attached is not a patented article but is nevertheless a commodity in the manufacture of which defendant has a practical monopoly. By tying to such commodity an obligation to purchase other commodities sold by defendant, the latter unlawfully extends the practical monopoly he enjoys with respect to the first commodity. Thus in *Carter Carburetor Corp. v. Federal Trade Commission*, 112 F. 2d 722 (C. C. A. 8, 1940), Carter carburetors were standard equipment on 60% of all 1937 passenger cars. Therefore a repair shop or garage attempting to service all makes of passenger cars *had to carry* Carter carburetors in stock. Hence Carter's notice that it would allow discounts only to shops and garages which agreed not to handle a competing product was, in effect, the *extension* of an existing *practical* monopoly. See, on the other hand, *B. S. Pearsall Butter Co. v. Federal Trade Commission* 292 Fed. 720, 722 (C. C. A. 7, 1923), where the product covered by exclusive dealing contracts was a "standardized product," which could "readily be supplied by many other makers," and the contracts were upheld.

product.[95] In this case the Court emphasized the fact that many small communities had only one such dealer and that in larger communities the manufacturer controlled the dealers "most resorted to" by customers.

In our case there is neither finding nor evidence indicating that Standard's retail dealers are the only dealers in any community or the dealers "most resorted to therein."[96]

In the fifth case, the *Fashion Originators' Guild* case, there was an *admitted purpose and intent* by powerful concerted action on the part of numerous manufacturers to drive competing manufacturers out of business and thus "create in themselves a monopoly."[97]

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[95] In *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346 (1922), the Fashion Company, or its holding company, controlled 40% of the nation's retail dealers in patterns for women's and children's garments through contracts obligating the dealer not to sell other makes of patterns. (p. 357.) The Court quoted with approval the following summary of the matter by the Circuit Court (p. 357): "'The restriction of each merchant to one pattern manufacturer must in hundreds, perhaps in thousands, of small communities, amount to giving such single pattern manufacturer *a monopoly of the business* in such community. Even in the larger cities, to limit to a single pattern maker the pattern business of dealers *most resorted to by customers whose purchases tend to give fashions their vogue* may tend to facilitate further combinations; so that the plaintiff, or some other aggressive concern, instead of controlling two-fifths, will shortly have almost, if not quite, all the pattern business.'"

[96] As already pointed out, the District Court recognized a failure of the government's proof to support the complaint's allegations that Standard's dealers occupied *"favorably situated"* retail outlets. (See page 12 and footnote 13 herein.)

[97] In *Fashion Originators' Guild v. Federal Trade Comm.*, 312 U. S. 457 (1941), the Guild, composed of manufacturers of textiles and 176 garment manufacturers, for the admitted purpose (p. 461) of destroying the competition of other manufacturers copying their designs, inaugurated and enforced a system whereby its members would sell textiles to garment manufacturers only on condition that the latter would not use or deal in textiles copied from designs of textile manufacturing Guild members and would sell manufac-

In our case there was neither finding nor evidence that Standard combined or conspired to monopolize, or had the purpose, or intent, or power to monopolize.

Thus *in the only cases in which this Court has held sec. 3 of the Clayton Act to be applicable, monopoly was an ingredient.* In the *United Shoe Machinery, International Business Machines,* and *International Salt* cases enlargement of an *existing patent monopoly* was attempted by "tying-clauses"; in the *Standard Fashion* case monopoly had been acquired in small communities where there was only one outlet controlled by Standard Fashion, as well as in larger communities where Standard Fashion controlled the outlets "most resorted to by customers"; and in the *Fashion Originators' Guild* case there was a clear purpose and intent by a powerful group to achieve monopoly by driving competitors out of business by an organized boycott.

In these five cases in which this Court held sec. 3 of the Clayton Act to be applicable, there was no intimation that

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tured garments to retailers only on condition that the latter would not use or deal in such copied designs. (p. 464.) As a result approximately 12,000 retailers throughout the country agreed to "cooperate" in this boycott program. (p. 461.) The Court pointed out (p. 462): "The power of the combination is great; competition and the demand of the consuming public make it necessary for most retail dealers to stock some of the products of these [Guild] manufacturers. . . . (p. 466.) In this case, the Commission found that the combination exercised sufficient control and power in the women's garments and textile businesses to exclude from the industry those manufacturers and distributors who do not conform to the rules and regulations of said respondents, and thus tend to create in themselves a monopoly in the said industries. . . . (p. 467.) . . . . the aim of petitioners' combination was the intentional destruction of one type of manufacture and sale which competed with Guild members. The purpose and object of this combination, its potential power, its tendency to monopoly, the coercion it could and did practice upon a rival method of competition, all brought it within the policy of the prohibition declared by the Sherman and Clayton Acts."

"requirements" contracts are unlawful *solely* because they are numerous and involve a substantial volume of products. Something more is required to make them illegal—*prejudice to the public*. In the five cases referred to this prejudice was found because *the facts demonstrated* creation or enlargement of monopoly. But in our case the District Court decided that the government's case was "established" [R. 126] by number of contracts and volume of products—that the contracts affected an "appreciable segment" of commerce and that was an end of the matter. Other facts were disregarded. If this be the law, then every "requirements" contract affecting a sizeable quantity is unlawful and the scope of sec. 3 is infinitely and disastrously extended.

Two of the three cases in which sec. 3 was held *not* to have been violated contained little, if any, discussion by this Court which is helpful to a determination of the application of the section in our case.[98] However, the third case in which sec. 3 was held *not* to have been violated is very much in point. That case is *Federal Trade Comm. v. Sinclair Co.*, 261 U. S. 463, already referred to. There-

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[98] In *Federal Trade Comm. v. Curtis Publishing Co.*, 260 U. S. 568 (1923), the company consigned its magazines to dealers, obligating the latter not to act as agent for or wholesale the periodicals of any competitor, but sec. 3 of the Clayton Act was held to be inapplicable on the ground that the dealers were agents and not purchasers of the magazines.

In *Pick Manufacturing Co. v. General Motors Corp.*, 299 U. S. 3 (1936), the company sold motor cars through dealers under a contract which obligated the dealer not to sell or use in the repair of the company's cars second-hand or used parts or parts not manufactured or authorized by the company. The District Court had found that the effect of this contract was not to substantially lessen competition or create a monopoly. The Circuit Court of Appeals had affirmed. This Court affirmed under the rule that it will accept findings in which two courts have concurred unless clear error is shown.

in Sinclair leased at a nominal rental underground tanks and gasoline pumps to numerous retail gasoline dealers on condition that the dealer would use such equipment solely for storing and handling Sinclair's gasoline. The Commission found (p. 471) that only a small proportion of the lessees required or used more than one pump. Thus the practical effect of the condition was to confine the lessees to Sinclair's gasoline. Nevertheless, this practice was upheld under sec. 3. The *Standard Fashion* case and the *United Shoe Machinery* case were distinguished. This Court said (p. 475):

> "*No purpose or power to acquire unlawful monopoly has been disclosed*, and the record does not show that the probable effect of the practice will be unduly to lessen competition. Upon the contrary, it appears to have promoted the public convenience by inducing many small dealers to enter the business and put gasoline on sale at the crossroads."

Use of monopoly power as a "leverage" to obtain something additional or enlarge the monopoly has recently been condemned under the Sherman Act in *United States v. Griffith*, 334 U. S. 100, 106, *Schine Theatres v. United States*, 334 U. S. 110, 116, and *United States v. Paramount Pictures*, 334 U. S. 131, 157, 158.

In the first two cases an exhibitor operating numerous motion picture theatres in various cities, in some of which there were no competing theatres, contracted with a distributor of films for privileges for *all* its theatres not accorded other distributors. It was held that this violated the Act, because such exhibitor had *utilized its monopoly position in the cities where it had a monopoly* to exact

privileges not enjoyed by competitors for all cities in which it had theatres.

In the last case referred to, "block-booking," *i. e.*, the licensing of one copyrighted motion picture on condition that the exhibitor also take one or more additional copyrighted pictures, was condemned on the ground that this was an enlargement of the copyright monopoly. It was said (p. 158) that where "a high quality film greatly desired is licensed only if an inferior one is taken, the latter borrows quality from the former and *strengthens its monopoly* by drawing on the other. . . . Even where all the films included in the package are of equal quality, the requirement that all be taken if one is desired increases the market for some. . . . *the result is to add to the monopoly of the copyright in violation of the principle of the patent cases involving tying clauses.*"

In our case there was no evidence of the use of monopoly power as a "leverage."

At the trial two decisions were particularly relied upon by the government: *United States v. Yellow Cab Co.*, 332 U. S. 218, and *International Salt Co. v. United States*, 332 U. S. 392.

In both of these cases the facts presented to this Court showed that monopolies were contemplated and attained by the practices complained of.

In the *Yellow Cab* case, one of the restraints resulting from the conspiracy complained of was that through stock control CCM obligated cab operating companies in Chicago

to buy their cabs exclusively from CCM. Under the facts pleaded and accepted as true by this Court on appeal from the order granting a motion to dismiss,[99] a monopoly was contemplated and attained, for the Chicago cab buyers had 2,595, or 86% of the 3,000 *available* Chicago cab licenses (pp. 223, 230). *A Chicago ordinance limited to 3,000 the number of cab licenses which could lawfully be issued* (p. 223). Thus, *CCM obtained the exclusive business of buyers having by law a virtual monopoly.*

In our case there is nothing resembling this. The buyers with whom Standard contracted had no monopoly of the retail trade in any locality or in the entire area or by virtue of "favorably situated" locations. (See p. 12, and footnote 13 herein.) On the contrary *the "market" with which Standard and its competitors dealt was constantly expanding.* For example, between 1936 and 1946 (while Standard's "requirements" contracts were being used) total gasoline sales to all accounts increased 64% [R. 1656, 939] and total lubricating sales to all accounts increased 104%. [R. 1660, 939.] (During that period Standard's dealer sales of such products increased only 58% [R. 1656, 939] and 62% [R. 1660, 939] respectively.)

Another restraint resulting from the conspiracy complained of in the *Yellow Cab* case was that Parmelee Transportation Company *by agreement* with other Chicago cab operating companies was to have the exclusive right to engage in the business of transporting railroad passen-

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[99] Upon remand of this case, the proof was found not to support the allegations of the complaint upon which this Court predicated its decision in 332 U. S. 218, and judgment went for the defendants. *United States v. Yellow Cab Co.*, ... Fed. Supp. ...

gers between Chicago railroad depots. This Court said (p. 229):

> ". . . *exclusive contracts for the transportation service in question are not illegal.* . . . *But a conspiracy to eliminate competition in obtaining those exclusive contracts* is what is alleged in this case and it is a conspiracy of that type that runs afoul of the Sherman Act."

Thus, a contract between a railroad and a cab company giving the latter an exclusive right to transport the railroad's passengers would not be illegal; an agreement between such cab company and its competitor cab companies that the latter would not seek contracts of this kind from the railroad would be illegal.

In our case there is nothing resembling this "parceling-out" of the available market. Standard's competitors have always been free to contract with dealers who were not already under contract with Standard, and to contract with the latter when their contracts with Standard expired. Standard's competitors have also been free to establish new station outlets, which may be created at comparatively small cost, for, as already pointed out, Standard's dealer outlets do not to any extent pre-empt the "favorably situated" locations. (See p. 12, and footnote 13 herein.) This is exactly what these competitors have done. The competition between Standard and other suppliers for contracts with dealers and for new sites has been vigorous and has been going on for a long time.

In the *International Salt* case (332 U. S. at 396) this Court said:

> "The volume of business affected by these contracts cannot be said to be insignificant or insubstantial and *the tendency of the arrangement to accomplishment of monopoly seems obvious.*"

This was true because the contracts sought to extend the scope of an existing patent monopoly. The Court's statement in the *International Salt* case (332 U. S. at 396), quoted with approval in the *Griffith* case (334 U. S. at 107), that "it is unreasonable, *per se*, to foreclose competitors from any substantial market," must be confined to the setting of those cases—monopoly power used as a "leverage" to enlarge an existing "lawful" monopoly or exact privileges not enjoyed by competitors. Otherwise, this rule would condemn every supply contract which embraces a substantial quantity.

In our case there was no monopoly power. Standard does not sell any article in the distribution of which it has a monopoly, patent or otherwise. The kind of commodities which it sells may be purchased from many other suppliers. A retail dealer can successfully operate a service station selling no Standard products whatever. In the Western area something like 29,500 retail dealers in gasoline are doing this today. [R. 1062, 1763-1777, 1064.] In that area every retail dealer is free to select the company for which he will handle products and such selection is made from among a large number of companies competing for his patronage.

(4) The District Court Failed to Find Facts Requisite to Show Illegality, i. e., Failed to Find Facts Showing That the Contracts Were an Unreasonable Restraint or Might Have the Effect of Substantially Lessening Competition or Tending to Create Monopoly.

The District Court's conclusions of law [R. 186] that sec. 1 of the Sherman Act and sec. 3 of the Clayton Act were violated are not supported by the findings of fact.

There being no restraint which was "illegal *per se*" and no "specific intent to accomplish a forbidden restraint" (see Point II(2) herein), the District Court should not have decided the case solely on its findings as to the contracts, the number of dealers under contract, and the dollar volume of products handled under such contracts. Findings concerning *many other competitive and economic factors* were requisite. (*United States v. Columbia Steel Co.*, 334 U. S. 495, 527.) (See Point II(3) herein.)

There were no findings concerning the following:[100]

(a) The number of dealers who handle the products of Standard's competitors, or whether such number has increased or decreased.

(b) The number of Standard's competitors, or whether such number has increased or decreased.

(c) The volume of products handled by Standard's competitors, or whether such volume has grown or declined in comparison with Standard's volume.

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[100]Prior to the making of findings, defendants in connection with their motion for a reconsideration of the District Court's opinion, called that Court's attention to the importance of most of these factors. [R. 142-157.]

Under Rule 52 of the Federal Rules of Civil Procedure, "requests for findings are not necessary for purposes of review."

(d) The fact that the increase in consumer demand and consumption has been greater than the increase in Standard's dealer sales.

(e) Standard's practice in supplying dealers without contracts, and the dealer's freedom of choice in selecting a supplier with whom to contract, and, if he selected Standard, the type of contract to be executed.

(f) The fact that dealers under contract with Standard do not have the "favorably situated" outlets, or a monopoly in any given area.

(g) The decrease in the number of Standard's dealer outlets.

(h) The practices of Standard's competitors in seeking contracts and in contracting with dealers.

(i) The general adoption of a single-supplier system of gasoline distribution in the Western area by a multitude of dealers handling the products of Standard's competitors.

(j) The reasons for a dealer's handling the products of only one supplier.

(k) The probable effect upon competition of an elimination of the "requirements" contracts.

The findings which were made dealt with Standard's operations *in a vacuum*—without reference to the competitive surroundings or background. The only possible ex-

ception to this is the finding [par. 25, R. 182] that Standard sells between 12 and 14 per cent of all the gasoline sold or distributed through independent retail dealer outlets in the "Western area"; that in the majority of states in that area Standard is the largest single marketer of gasoline through such outlets; and that Standard sold approximately 23 per cent of all gasoline sold in that area in 1946.[101]

The only finding dealing with the *intent, purpose*, or *effect* of the "requirements" clauses is par. 31. [R. 185.] The first part of this paragraph states that the "*intent, purpose* and *effect* of the exclusive supply provisions" of the contracts has been "to prevent the 'independent dealer' operating under said agreements from handling" competitive products. The remainder of the paragraph adds nothing to this. It declares in substance that the contracts were interpreted by the dealers to require exclusive handling of Standard's products; that the contracts denied the dealers access to competitive products; that the dealers have been prevented from purchasing merchandise in an open competitive market; and that the contracts were intended to and do confine the dealers to Standard's products.

In effect this finding simply declared that the dealers, because they lived up to the obligations of their contracts with Standard, were precluded from purchasing their "re-

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[101] See comment on this finding in the opening Statement, pages 25, 26 herein.

quirements" from Standard's competitors, and that this was the purpose and intent of the parties.

Something more in the way of findings of fact was required to support a conclusion of law that either the Sherman Act or the Clayton Act was violated.

Taking the findings as they stand, no violation of the Sherman Act is shown because there are no facts found showing that the "requirements" contracts were a restraint *"illegal per se"* and there is no finding that Standard had a specific intent *"to accomplish a forbidden restraint," i. e.,* a specific intent "to unreasonably restrict the opportunities of competitors to market their product." (*United States v. Columbia Steel Co.*, 334 U. S. 495, 522, 524.) The "intent" paragraph of the findings [par. 31, R. 185] did not so find.

Taking the findings as they stand, no violation of the Clayton Act is shown because there is no finding that the "effect" of the contracts might be "to substantially lessen competition or tend to create a monopoly." The "effect" paragraph of the findings [par. 31, R. 185] did not so find. This finding simply declared that the "effect" of the contracts was to prevent the contracting dealers from handling competitive products. This finding could be made with reference to a multitude of perfectly legal contracts. Suppose that A, a supplier, makes a contract with B, a manufacturer, to sell B 1000 barrels of fuel oil for B's factory. To the extent that B's factory requirements are satisfied by the 1000 barrels, *the contract prevents B from buying competing fuel oil,* and the finding

which the District Court made in our case would be entirely appropriate.

It is no answer to this to say that other fact findings show (a) that there were "requirements" contracts with 5107 dealers, and (b) that a large dollar volume of products was handled annually thereunder. To say that these facts conclusively establish the ultimate fact—that the effect of the contracts was to substantially lessen competition or tend to create monopoly—is to say that "requirements" contracts, without more are forbidden *provided they affect a sizeable quantity*. This was not the purpose of the Clayton Act. In the thirty-four years since its enactment this Court has never suggested that size of operations *without more* spelled the difference between compliance therewith and violation thereof.

To determine whether the effect of the contracts was to substantially lessen competition or tend to create monopoly, further findings of fact were necessary—findings dealing with the entire competitive picture. It cannot be determined that competition was substantially lessened or monopoly threatened *solely because* Standard's competitors could not sell products to dealers with whom Standard had contracts during the life of such contracts. This determination must depend upon all factors which might affect the situation of these competitors. Findings with respect to these factors were not made.[102]

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[102]Error is specifically assigned. [R. 1870-1872.]

(5) "Requirements" Contracts With California Dealers Are Not in Restraint of Interstate Commerce, and Are Not "in the Course of" Such Commerce, and Do Not Substantially "Affect" Such Commerce.

The District Court erred in concluding that such of the contracts as were made with *California dealers* restrained *interstate* commerce, or were made "in the course of" *interstate* commerce or had any substantial "effect" upon *interstate* commerce.[103]

Under sec. 1 of the Sherman Act the restraint must be upon *interstate* commerce.

Under sec. 3 of the Clayton Act the contracts must have been made "*in the course of*" *interstate* commerce,[104] and must have had the "effect" of substantially lessening competition or tending to create monopoly in a "line of [*interstate*] commerce."

Crude oil comes *solely* from California wells. [R. 223, 227.] It moves *solely* to California refineries. [R. 182.] Thence the refined products move in California to Cali-

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[103] Error is specifically assigned. [R. 1868, 1869.]

[104] *Lewis v. Shell Oil Co.*, 50 Fed. Supp. 547 (Ill. 1943), dealt with sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act (15 U. S. C. 13a), which makes it unlawful for any person engaged in commerce "*in the course of such commerce*" to discriminate in price between different purchasers. The Court dismissed the complaint on the ground that the "requirements" contract in question, under which gasoline was delivered from Shell's bulk plant in Chicago (supplied from Indiana) to a Chicago dealer, was not within the purview of the Act. The Court said (p. 549): "However, there is a distinction between acts or transactions which merely affect commerce, and those which are actually performed in commerce. *It is those acts and transactions which are actually performed in commerce against which the Robinson-Patman Act is specifically directed, and nowhere does that Act refer to transactions which only affect commerce.*"

fornia bulk plants[105] and thence to dealers in California, or directly from the refinery to dealers in California. [R. 182, 183.]

Substantially all the tires, tubes and batteries which eventually go to California dealers, are acquired by Standard from factories and plants located in California; thence move to Standard's California warehouses located at San Francisco, Fresno and Los Angeles; thence move to the dealers in California. [R. 230, 1051, 975, 976.]

The contracts with the California dealers[106] are made in California [R. 247], and, as previously indicated, the products supplied thereunder move to the California dealer within California.

Addyston Pipe & Steel Co. v. United States, 175 U. S. 211 (1899), is in point under the Sherman Act. There a decree enjoining certain defendants engaged in the manufacture and sale of cast iron pipe from combining to enhance prices by eliminating competitive bidding in the sale of such pipe, was affirmed. But in the course of the opinion it was said (p. 247):

> "In one aspect, however, that *judgment is too broad in its terms*—the injunction is too absolute in its directions—*as it may be construed as applying equally to commerce wholly within a State as well as to that which is interstate or international only.* This was probably an inadvertence merely. Although the ju-

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[105] A few bulk plants located just over the California line in other states make deliveries of Standard's petroleum products to dealers in California, but these deliveries are relatively insignificant, being a very small fraction of 1% of Standard's California distribution. [R. 1027, 975, 976.]

[106] Standard sold to 2354 California dealers under some form of writing and to 429 California dealers without any writing, or a total of 2783. [R. 1315, 1316, 212.]

risdiction of Congress over commerce among the States is full and complete, it is not questioned that it has none over that which is wholly within a State, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce. *It does not acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State, by reason of the fact that the combination also covers and regulates commerce which is interstate.* The latter it can regulate, while the former is subject alone to the jurisdiction of the State. The combination herein described covers both commerce which is wholly within a State and also that which is interstate.

"In regard to such of these defendants as might reside and carry on business in the same State where the pipe provided for in any particular contract was to be delivered, the sale, transportation and delivery of the pipe by them under that contract would be a transaction wholly within the State, and the statute would not be applicable to them in that case. They might make any combination they chose with reference to the proposed contract, although it should happen that some non-resident of the State eventually obtained it.

* * * * * * * *

"To the extent that the present decree includes in its scope the enjoining of defendants thus situated from combining in regard to contracts for selling pipe in their own State, it is modified, and limited to that portion of the combination or agreement which is interstate in its character."

To the same effect, see *Small Co. v. Lamborn & Co.*, 267 U. S. 248 (1925).

United Shoe Machinery Co. v. United States, 258 U. S. 451 (1922), is in point under the Clayton Act. There it was said (p. 465):

> "It is insisted that the leases in controversy were not made *in the course of interstate commerce*, and, therefore, cannot be embraced within the terms of the Clayton Act. It is provided in the decree that it shall apply to all leases covering shoe machinery shipped from one State to the user or factory for use in another State in the course of or as a part of the transaction between the lessor and the lessee, resulting in the making of the lease. It is true that the mere making of the lease of the machines is not of itself interstate commerce. But where, connected with the making of such lease, a movement of goods in interstate commerce is required, we have no doubt of the authority and purpose of Congress to control the making of such leases by the enactment of the statute before us."

There was no evidence that a "movement of goods in interstate commerce" was contemplated or required or actually occurred in connection with any of the "requirements" contracts made with dealers located *in California*.

The judgment of the District Court should have excepted from its operation contracts made between Standard and dealers located *in California*. As to these, the District Court was without jurisdiction.

CONCLUSION.

The case presented is one where the District Court patently and avowedly applied what we have called the "appreciable segment" of commerce theory. It erred in so doing. Because of this error it excluded material evidence, and gave no weight to and made no findings concerning material evidence which was admitted. It should have decided the case upon a correct theory—what we have called the "detriment to the public interest" theory. This would have required it to weigh the factors which it thus disregarded. Appellants were entitled to have these factors weighed by the trier of fact.

It cannot be said that if the trier of fact had applied the correct theory and given weight to these factors, no decision favorable to Standard could reasonably have resulted.[107] Even if we leave out of account matters sought to be introduced but which were excluded, and take simply the uncontradicted facts disclosed by the record, these demonstrate that there was no violation of either the Sherman Act or the Clayton Act.

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[107]While this Court has said that it will not disturb a judgment for error which does not work injury, it has also said that "it is well settled that a reversal will be directed unless it appears, *beyond doubt*, that the error complained of did not and could not have prejudiced the rights of the party" (*Vicksburg & Meridian Railr'd. v. O'Brien*, 119 U. S. 99, 103); that whenever affirmance is sought because the error was not injurious, "*it must appear so clear as to be beyond doubt* that the error did not and could not have prejudiced the party's rights." (*Deery v. Cray*, 5 Wall. 795, 807.)

It is respectfully submitted that the judgment of the District Court should be reversed with directions to enter a judgment in favor of appellants.

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be reversed with directions to enter
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 279.

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC., *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the District Court of the United States for the Southern District of California.

REPLY BRIEF OF APPELLANTS, STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC.

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Appellants, Standard Oil Company of California and Standard Stations, Inc., present the following reply brief.[1]

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[1] Herein appellee will sometimes be referred to as "the government;" and appellant Standard Oil Company of California as "Standard". References to pages of the transcript of record are designated: R. References to Appellants' Brief are to the opening brief of appellants heretofore filed herein. References to the Brief for the United States are designated: Govt. Br. Italics throughout this brief have been supplied.

I.

The Government's "Foreclose-Competitors-From-Any-Substantial-Market" Argument Would Strike Down a Multitude of Contracts Underlying the Nation's Industrial and Commercial Structure.

Every contract for the future sale of goods excludes competitors from the market—in the sense that the government contends Standard's "requirements" contracts exclude competitors of Standard.

If such contract embraces a *substantial* quantity it excludes from a *substantial* market—in the sense that the government contends that Standard's competitors are excluded from a *substantial* market.

Yet certainly every contract for the future sale of a substantial quantity which contemplates a movement of goods in interstate commerce cannot be condemned by the Act.

A contract by which a steel company agrees to furnish over a three year period the steel "requirements" of a motor car manufacturer or a large specified quantity of steel for such manufacturer (to now employ the phraseology of government counsel) "destroys the opportunity" of other sellers of steel to sell such motor car manufacturer the steel thus contracted for, and deprives the motor car manufacturer of the "right to buy" such steel from competitors of the contracting seller. The substantial part of of the market represented by the motor car manufacturer's contract commitments is "fenced off" and for three years "closed" to the steel company's competitors.

But such contract is not illegal even though the quantity embraced thereby is *very substantial* and a movement of goods in interstate commerce is contemplated.

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[2] This phrase appears in the *International Salt* case (332 U. S. at 396) and again in the *Griffith* case (334 U. S. at 107), but is there used to condemn monopoly power used as a leverage to enlarge an existing patent monopoly or exact special privileges not enjoyed by competitors.

Suppose that in our case Standard, instead of making "requirements" contracts with dealers, had made with each of 4,000 dealers a contract to sell such dealer 20,000 gallons of its gasoline, deliveries to be made over a period of one year. This would amount to a total annual quantity of 80,000,000 gallons of gasoline and a total annual dollar volume of $14,000,000.[3] Implicit in such contracts would be at least an "understanding" that such dealers would not buy 80,000,000 gallons of gasoline from Standard's competitors. Would this be a substantial "captive" market (Govt. Br. 25, 27) from which Standard's competitors would be "shut away"? All the arguments which the government now levels at Standard in our case could be employed in the case thus supposed. No logical line of demarcation separates the one from the other. Yet if the case thus supposed violates the law, the practices of industry and commerce nationwide must undergo extensive alteration.

Obviously the broad generalizations of the government's brief—such generalizations as: "it is also unlawful to exclude from the market any of those who supply it . . ." (Govt. Br. 25, 26); "freedom of trade includes unrestricted access to the market" (Govt. Br. 26): "agreements which fence off a substantial segment of the market . . . impinge upon the right of freedom of trade . . ." (Govt. Br. 26): and "stifle competition by denying competitors less favorably situated access to the market" (Govt. Br. 30, 31)—may not be applied to condemn the contracts here involved unless a multitude of contracts all over the country and heretofore regarded as valid are likewise to be condemned.

Under the rule contended for by the government *all* "requirements" contracts for the future supply of goods in interstate commerce would be illegal, provided they em-

[3] Assuming a price of 18¢ per gallon, this being the assumption employed by the government in arriving at the dollar volume of Standard's gasoline sales. (R. 820)

braced a *substantial* quantity. The same would be true of all contracts for the future supply of a *substantial* and definite quantity of goods in interstate commerce where the proof showed that such definite quantity was in fact the buyer's requirements *for any period*. The same would be true of all contracts for the future supply of a *substantial* and definite quantity of goods in interstate commerce which was less than the buyer's requirements, for such contracts are as instrumental as "requirements" contracts in excluding competitors from the "market" represented by the quantity for which the buyer has contracted.

So, in this case, it is submitted that there is no *unlawful* exclusion of competitors from the market *simply by virtue of the fact* that Standard makes "requirements" contracts with a large number of dealers for *substantial* quantities.

Moreover, in this case, there is in fact no exclusion of competitors from the market in the sense that Standard's competitors are prevented from freely competing with Standard in an endeavor to obtain contracts with dealers. In every instance, Standard's competitors *freely compete* with Standard to induce the dealer to execute a supply contract. Frequently such competitors are successful in obtaining a contract with the dealer to the exclusion of Standard (R. 1068). Standard does not and cannot execute any such contract with a dealer except in fair and open competition with its competitors. In such competition for the patronage of the dealer Standard has no unlawful competitive advantage, and Standard's competitors have "unrestricted access to the market."

The foregoing points to the futility of the government's attempt to identify Standard's "requirements" contracts with a boycott. (Govt. Br. 27) In a boycott the parties by concert of action enforce non-dealing and usually seek to prevail upon others to do likewise. In this case there is no evidence whatever of concert of action between Standard

and any of its competitors. On the contrary, as pointed out above and in Appellants' Brief, p. 93 et seq. there is aggressive competition between Standard and its competitors. Nor is there any concert of action between Standard and the dealers to exclude Standard's competitors. If, as pointed out above, competition is in a sense lessened by the contracts themselves, it is no more than that lessening of competition which always occurs whenever one seller is successful in the competitive struggle in inducing the buyer to finally say that he will buy such seller's goods. Competition is itself a "conflict for advantage" (*United States* v. *American Linseed Oil Co.*, 262 U. S. 371, 388). One of the competing parties must eventually be successful—otherwise there is no such thing as competition. The lessening of competition brought about by the "requirements" contracts is not an *unlawful* lessening of competition.

It is true that Standard will not sell gasoline or tires or tubes or batteries or accessories to a dealer who handles a competitive gasoline.[4] But this is not a boycott, nor is it unlawful. This Court in *United States* v. *Colgate & Co.*, 250 U. S. 300, said (p. 307):

> "In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long recognized right of trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell."

The government adverts (Govt. Br. 29, 30) to the finding (R. 181) which states that Standard "persuaded, induced, and influenced" dealers to enter into "requirements" contracts by lending the dealer money without interest or at

[4] It will and does sell lubricating oil to a dealer who handles competitive products including competitive gasoline. (R. 1074)

rates of interest below current rates; by making loans, portions of which were later forgiven; by making gifts of money; by buying equipment from the dealer and thereafter furnishing new equipment without charge; or by selling equipment to the dealer at less than cost. The government states (Govt. Br. 15) that our assignment of error to this finding is "in flat contradiction of the admission of" Standard's answer. But such answer (R. 94) admitted only that Standard had employed these methods "*in the past*" and "*in order to meet the competition*" of defendants' competitors who were employing the same methods and offering like or similar benefits to operators; averred that there had been no giving of money or forgiving of loans subsequent to May 1, 1946 and that this had occurred only "*in rare instances*" prior thereto; admitted that "in certain cases" these benefits may have been "one of the reasons why the operator entered into a contract, but that in many . . . cases said benefit was accorded the operator for the purpose of promoting his sales, or for some other reason quite apart from the making of any contract or lease." All else in the complaint pertaining to this was denied. Obviously such admissions as are embodied in the answer are not at all in conformity with paragraph 22 of the findings (R. 184) and the error assigned to the latter is by no means a "contradiction" of admissions in the answer.

The rarity of these practices is demonstrated by the testimony. Mr. McClanahan, Standard's vice president in charge of sales, testified that "*several dealers*" may have been assisted financially, but that "*we just don't make gifts to anybody*" (R. 250). When his attention was called to one specific case of financial assistance to a dealer, and he was asked if this was the kind of thing that happened frequently, he replied, "Not frequently. *Very infrequently*" (R. 253). He also testified that the total number of loans to dealers, "*would amount to very few in number*" (R. 254.

277). Nothing elsewhere in the record disputes Mr. McClanahan's testimony as to the rarity of these practices. Moreover, the District Court's finding does not state the number of instances in which these "inducements" were employed or that such instances were numerous (R. 181).[5]

These "inducements" occurred only in very rare instances. It is believed that the record will disclose only six or seven such instances. (See Exhs. 16-17-18-19-20 and 21. R. 1326, 1342, 1383, 1389, 1394C, 1405.)

The complaint did not seek any injunction restraining these so-called "inducements" (R. 1, 11). *They were not enjoined by the judgment* (R. 188).

II.

Exclusive Dealing Contracts, Even Though They Involve Substantial Quantities and Value, Are Not Illegal Unless They Seek to Enlarge an Existing Monopoly, or Are a Calculated Scheme to Gain Control of the Market and to Restrain or Suppress Competition, Rather Than to Advance Legitimate Business Needs, or Unless They Unreasonably Restrict the Opportunities of Competitors to Market Their Product.

The government says that Standard's "requirements" contracts are illegal because they "*destroy the opportunity of other sellers of similar products to compete for the patronage" of the outlets* (Govt. Br. 25).

But certainly it is now clearly established that exclusive dealing contracts are not illegal *without "something" more.*

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[5] The finding (par. 22, R. 181) states that defendants have persuaded, induced and influenced dealers to enter into "the various written and oral agreements *described in Paragraphs 11-15, 17 and 18 herein* by various means and methods", etc. This does not say "all" agreements and the paragraphs referred to, viz., 11-15, 17 and 18 *are not the paragraphs which refer to the numbers of the several contracts outstanding.*

This was the Court's pronouncement in the *Columbia Steel* case (334 U. S. 495 at 523, 524).[6]

This was pointed out in the *Yellow Cab* case (332 U. S. 218).[7]

This was stated in the *Paramount Pictures* case (334 U. S. 131 at 173, 174) where the Court was referring to exclusive dealing brought about by vertical integration.

What is the "something" which must be added to exclusive dealing to make it illegal?

Certainly it is not magnitude or volume of operations. The decision in the *Columbia Steel* case (334 U. S. 495) refutes the idea that it is magnitude or volume which makes exclusive dealing illegal. There U. S. Steel lawfully acquired the exclusive business of Consolidated Steel, "the largest independent steel fabricator on the West Coast" (p. 498), and by so doing obtained the *exclusive right for all time to come* of supplying a "market" amounting to $5,000,000 annually (p. 537).

The decision in the *Yellow Cab* case (332 U. S. 218) refutes the idea that it is magnitude or volume which makes exclusive dealing illegal. There it was indicated that Parmelee might lawfully make exclusive dealing contracts

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[6] Therein this Court said (334 U. S. 495 at 524):

> "Exclusive dealings for rolled steel between Consolidated and United States Steel, brought about by vertical integration *or otherwise*, are not illegal, at any rate until the effect of such control is to unreasonably restrict the opportunities of competitors to market their product."

[7] Therein Parmelee had exclusive contracts with the railroads entering Chicago to transport passengers between railroad stations. This Court said (332 U. S. 218 at 229):

> "It is true, of course, that *exclusive contracts* for the transportation service in question are not illegal."

It is then pointed out that these contracts between Parmelee and the railroads became illegal *only because of the allegation that the other cab companies in Chicago had agreed with Parmelee that Parmelee alone should provide this service.*

with the railroads, provided it did not *agree with its competitors* that it (Parmelee) should have this business and its competitors should not have it (332 U. S. at 229). The volume of dealing under these contracts between Parmelee and the railroads must be very large.

The decision in the *Sinclair* case (261 U. S. 463) refutes the idea that it is magnitude or volume which makes exclusive dealing illegal. In that case Sinclair lawfully made exclusive dealing contracts with gasoline dealers, and the volume of dealing under these contracts must have been very large for Sinclair was a large oil company and its operations were widespread.[8]

The decision in the *Pick* case (299 U. S. 3) refutes the idea that it is magnitude or volume which makes exclusive dealing illegal. Therein exclusive dealing contracts between General Motors and its dealers were approved, although in view of the size of General Motors these contracts doubtless were numerous and involved a large dollar volume of products.

Searching for the "something" in addition to magnitude or volume which will make exclusive dealing contracts illegal, we find the following:

(A) Exclusive dealing contracts will be held illegal if they are a means by which an existing monopoly is enlarged. (See Appellants' Brief, p. 99 et seq.) Typical of this is the *International Salt* case (332 U. S. 329)—a "tying-clause" case which declares it to be illegal for the owner of an article monopolized by patent to attempt to extend such patent monopoly by requiring the lessee of the patented article to purchase from the owner of the patent non-patented articles for use in connection with the patented ar-

[8] Neither the findings of the Federal Trade Commission nor the decisions in the Circuit Court of Appeals or the Supreme Court indicate the *number* of contracts involved or the *volume* handled thereunder.

ticle.[9] *But in our case Standard has no monopoly, patent or otherwise.*

(B) Exclusive dealing contracts will be held illegal if they are "*a calculated scheme to gain control over an appreciable segment of the market and to restrain or suppress competition; rather than an expansion to meet legitimate business needs.*" This is the pronouncement (with respect to exclusive dealing brought about by vertical integration) in the *Paramount Pictures* case (334 U. S. 131 at 174). *But in our case there was no such scheme, and the "requirements" contracts were a normal expansion to meet legitimate business needs.*

(C) Exclusive dealing contracts will be held illegal if their effect was "*to unreasonably restrict the opportunities of competitors to market their product*". This is the pronouncement in the *Columbia Steel* case (334 U. S. 495, 524). *But in our case the "requirements" contracts did not unreasonably restrict the opportunities of competitors to market their product.* (See Appellants' Brief, p. 87 et seq.)

III.

The District Court Did Not Find or Weigh the Factors Which Would Have Demonstrated That Standard Did Not Exert Monopoly Power, and Had Not Perpetrated a Calculated Scheme to Gain Control of a Market and to Restrain or Suppress Competition, and Had Not Unreasonably Restricted the Opportunities of Its Competitors to Market Their Product. Instead It Predicated Its Conclusions Solely on the Magnitude and Volume of Standard's Operations.

The government does not dispute the fact (elaborated under Point I of Appellants' Brief, p. 40 et seq.) that the District Court, in reaching its conclusions adverse to Standard, disregarded everything except (a) the "require-

[9] To like effect are *United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451 and *International Business Machines Corp.* v. *United States*, 298 U. S. 131.

ments" contracts, (b) the number of dealers under such contracts, and (c) the volume of business handled thereunder. The District Court did not weigh or make findings with respect to other relevant factors and it shut out evidence relevant thereto (Appellants' Brief, p. 40 et seq. and p. 110 et seq.). The government seeks to support this position.

Certainly, to determine whether the *intent* of the "requirements" contracts was "a calculated scheme to gain control . . . and to restrain or suppress competition, rather than an expansion to meet legitimate business needs", or to determine whether the *effect* of such contracts was to "unreasonably restrict the opportunities of competitors to market their product", the District Court as a trier of fact was required to (a) *receive the evidence which it excluded* as to what the "effect" of the elimination of the "requirements" clauses would be on competition and the over-all competitive picture, and (b) *make findings and weigh* "the facts peculiar to the business . . . : its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable," (*Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238); "the economic conditions peculiar to the . . . industry; . . . and the probable consequences of the carrying out of that plan in relation to market prices and *other matters affecting the public interest* . . ." (*Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 361); and was required to give heed to the clear pronouncement of this Court in the *Columbia Steel* case (334 U. S. 495 at 527) that

> "In determining what constitutes unreasonable restraint, *we do not think the dollar volume is in itself of compelling significance;* we look rather to the percentage of business controlled, the strength of the remaining competition, whether the action springs from business requirements or purpose to monopolize, the probable development of the industry, consumer demands, *and other characteristics of the market.*"

This was exactly what the District Court did not do.

The District Court ignored the basic requirements of the "rule of reason"—that *all the facts* of the particular case shall be considered and *weighed* by the *trier of fact* for the purpose of determining whether the practices complained of will *prejudice the public interest*. (See Appellants' Brief, p. 53 et seq.)

IV.

Appellants Have Not Admitted by the Pleadings or Otherwise That the "Effect" of the "Requirements" Contracts May be to "Substantially Lessen Competition" as That Term is Used in Sec. 3 of the Clayton Act.

Confronted with the results of nine years of operation under the "requirements" contracts—results which demonstrate that the practices complained of produce no substantial lessening of competition (see Appellants' Brief, p. 93 et seq.); government counsel now seek to invoke what is said to be an admission by defendants' answer that the "effect" of the contracts may be to substantially lessen competition (Govt. Br. 46). This admission, they say, is found in the Fifth affirmative defense in defendants' answer.

The Fifth affirmative defense (R. 96) in defendants' answer pleads that the "application and enforcement" of the antitrust acts sought herein was and is inequitable and violative of Constitutional guarantees in that Standard's contracts are alleged to violate the law and are sought to be declared void while numerous other existing contracts made by competitors of like or similar content are not attacked or sought to be enjoined and "*will not be legally attacked or sought to be enjoined by plaintiff*, by reason whereof a decree herein as prayed by plaintiff" would enable Standard's competitors to contract with Standard's existing and prospective customers upon terms which would be denied Standard, with the result that Standard would be deprived

of the custom and patronage of such customers, etc. It is the last part of this which the government contends is an admission that the "requirements" contracts have the effect of "excluding from the market" competitors who do not use such contracts, and that the effect of the contracts may be to substantially lessen competition.

No proof was offered to support this Fifth defense and no finding was made with respect thereto.

Obviously, if Standard could have proved that the Department of Justice would not attack and thus place the blessing of legality upon "requirements" contracts of Standard's competitors while at the same time enjoining the use of Standard's "requirements" contracts, there would be something queer about the situation. But unless the Department of Justice is prepared to concede the factual truth of the allegation of this Fifth defense (italicized above) that it (the government) will not legally attack or seek to enjoin use of "requirements" contracts by Standard's competitors, it should not be heard to urge that other allegations of this Fifth defense are factual admissions on the part of Standard. And if the Department of Justice is prepared to concede that "requirements" contracts in the hands of Standard's competitors will not be attacked or enjoined, this is a concession that "requirements" contracts generally are legal, for the Department of Justice is bound to enforce the law and take steps to enjoin contracts which violate the antitrust laws.

So if this Fifth defense is to be taken as a factual admission for the purpose of this lawsuit, let us take all of it as a factual admission. If so, in view of the presumption that the law will be obeyed by the Department of Justice, we have a clean cut factual admission by the government that "requirements" contracts do not violate the antitrust laws.

Of course, the truth is that none of this Fifth defense may be used as an admission either against Standard or against the government.

All of the allegations of the complaint that the effect of the "requirements" contracts was to exclude competitors from the market or substantially lessen competition were denied by the answer (see par. 34 of the complaint, R. 10, denied by par. 25 of the answer, R. 95).

Defendants were entitled to plead *inconsistent affirmative* defenses.[10]

Obviously, therefore, an admission in one affirmative defense cannot be taken as an admission in the case. If the rule were otherwise and all the allegations of inconsistent affirmative defenses were taken as admissions in the case, how would it be possible to draft consistent findings? The findings would either be at variance with certain of the admissions in certain affirmative defenses, or the findings would be hopelessly conflicting.

The authorities support the foregoing conclusions.

Glenn v. Sumner, 132 U. S. 152, 157
Banque de France v. Chase Nat. Bank, 60 Fed. (2d) 703, 708 (C. C. A. 2)
United States v. Stephanidis, 47 Fed. (2d) 554, 555 (C. C. A. 2)

In the case last cited it was said (p. 555)

> "It is true that appellee's separate defense setting up a breach of warranty admits that title to the vessel passed to the purchaser, and is inconsistent with its general denials; *but no contention has been, or could be, made that inconsistent defenses may not be raised in separate pleas, or that an admission in one plea may be used by a plaintiff to prove his case against a different plea which denies it.*" [citing Glenn v. Sumner, supra.]

[10] "* * * A party may also state as many separate claims or defenses as he has *regardless of consistency* and whether based on legal or on equitable grounds or on both. * * *" Rule 8(e)(2) Federal Rules of Civil Procedure.

Appellants respectfully submit that the judgment of t
District Court should be reversed with directions to ent
judgment in favor of appellants.

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Brief for the U.S.

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No. 279

In the Supreme Court of the United States

OCTOBER TERM, 1948

STANDARD OIL COMPANY OF CALIFORNIA AND STANDARD STATIONS, INC., APPELLANTS

v.

THE UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the District Court for the Southern District of California, Central Division (R. 99-137), and its supplemental opinion rendered on appellants' motion to reconsider (R. 158-167), are reported, respectively, in 78 F. Supp. 850 and 875.

JURISDICTION

The district court entered judgment for appellee on June 30, 1948 (R. 188-194; reported in 78 F. Supp. 889). The petition for appeal was filed on July 20, 1948, and was allowed the same day (R. 1876). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, as last amended by Section 17 of the Act of June 25, 1948, Pub. Law 773, 80th Cong., 2d Sess., 15 U. S. C. 29. Probable jurisdiction was noted on October 19, 1948 (R. 1947).

QUESTIONS PRESENTED

1. Whether the trial court correctly concluded that the foreclosure of competing suppliers from 6000 retail dealer outlets (approximately one-sixth of the total number in the seven States of the Western area) selling annually $66,000,000 worth of petroleum products and automotive accessories, and the denial to those dealer outlets of access to a competitive market, by exclusive dealing contracts between those dealer outlets and the appellants (suppliers of 23% of the gasoline marketed in those States) constitutes an unreasonable restraint of trade condemned by Section 1 of the Sherman Act.

2. Whether the trial court correctly concluded that the effect of these exclusive dealing contracts substantially lessens competition and tends to create a monopoly in violation of Section 3 of the Clayton Act.

3. Whether the trial court correctly concluded that it had jurisdiction to enjoin the intrastate use of exclusive dealing agreements on finding that their effect was to restrain interstate commerce.

STATUTES INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part as follows:

> Section 1 [as amended by the Act of August 17, 1937, 50 Stat. 693]. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: . . . [15 U.S.C. 1].
>
> Section 4 [as amended by the Act of March 3, 1911, Sec. 291, 36 Stat. 1167]. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of the act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. . . . [15 U. S. C. 4].

The Act of October 15, 1914, 38 Stat. 730, known as the Clayton Act, provides in part as follows:

> Section 3. It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise,

machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce. [15 U. S. C. 14]

STATEMENT

The United States brought suit against Standard Oil Company of California and its wholly owned subsidiary, Standard Stations, Inc., asking that the exclusive supply provisions of some 8,000 agreements entered into by them with approximately 6,000 independent service stations be declared violative of Section 1 of the Sherman Act and Section 3 of the Clayton Act, and that the further use of agreements containing these or similar provisions be enjoined. Following trial of the cause on the merits the district court adjudged the provisions illegal and void, and granted the relief prayed for by the Government.

The existence, number, and contents of the written agreements are not in controversy. Only their effect is in question. The issues involved are, therefore, almost exclusively legal in character. The Government accepts in their entirety the district court's findings of fact (R. 168-185; reported, 78 F. Supp. 879-888). Appellants challenge the correctness of the findings made in minor particulars only.[1] The recital of facts which follows is based upon the findings rendered by the district court, with their supporting evidence, and upon undisputed evidence.

Appellant Standard Oil Company of California is a Delaware corporation with its principal place of business in San Francisco. It produces and refines petroleum products in California, and transports, distributes and markets such products in California, Arizona, Washington, Idaho, Nevada, Utah and Oregon, which represent what the district court called the Western area (Fdg. 2, R. 168, 169). Appellant Standard refines gasoline at refineries at Richmond, El Segundo and Segura, all in California. It purchases gasoline from Utah Oil Refining Company, Salt Lake City, Utah, for dis-

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[1] Appellants contend that the court should have made additional findings, and, of course, they challenge such ultimate findings as, e.g., that the agreements constitute an unreasonable restraint on interstate commerce. But, in respect to evidentiary findings or findings not broadly interwoven with legal conclusions, appellants' objections are insignificant. See Appellants' Assignment of Error 3 (R. 1869).

tribution and sale in parts of Utah and Idaho, and from Standard Oil Company of Texas for distribution and sale in parts of Arizona. (Fdg. 24, R. 182.) It also purchases from various concerns, and distributes and sells a line of tires, batteries, and automotive accessories, a majority of which bears the Atlas brand name (Fdg. 28, R. 183; Fdg. 12, R. 173).[2]

Appellant Standard Stations, Inc., also a Delaware corporation with its principal place of business in San Francisco, is a wholly owned subsidiary of Standard, and manages and operates service stations in the Western area (Fdg. 3, R. 169).

Appellant Standard is the largest single marketer of gasoline through retail outlets in the majority of states in the Western area (Fdg. 25, R. 182). In addition to its sales, through retail outlets it makes industrial sales (App. Br.[3] 25). Appellant Standard's total sales of gasoline in 1946 amounted to 23% of the total taxable gallonage sold in the seven-state Western area (Fdg. 25, R. 182).

Early in 1947 there were in the Western area 36,500 retail gasoline outlets, including both the independent dealer-operated stations and the com-

---

[2] "Automotive accessories" as used in the Findings of Fact by the court below refers to replacement parts and articles other than petroleum products used in servicing automotive vehicles and includes tires, tubes, batteries, spark plugs, oil filters, oil filter cartridges, fan belts, battery cables, auto lamp bulbs, fuses, windshield wipers and blades, tire repair and vulcanizing kits, anti-freeze preparations, tire chains, waxes and polishes and other light items (Fdg. 5 (D), R. 170).

[3] App. Br. refers to Appellants' Brief.

pany-operated stations of appellants and of other gasoline suppliers (App. Br. 20, R. 1061-2, 1763-1777, 1064). Appellants owned and operated 1063 or 3% of these outlets (R. 101, App. Br. 10).[4] 5937, representing 16% of the total outlets were operated by dealers subject to exclusive dealing agreements with appellants (Fdg. 19, R. 179).

Appellants had 7887 exclusive-dealing agreements covering the 5937 outlets. Some dealers were parties to more than one type of agreement. (Fdgs. 16 and 17, R. 179).

These agreements were divided into seven types, five written and two oral. Under their terms all 5937 of the outlets are forbidden to handle competitors' gasoline (Fdgs. 11-17, R. 172-179). More than 7000 of the agreements, all but 742, forbid handling competitive petroleum products of any sort (Fdgs. 1117, R. 172-179). In addition 2777 of these 7000 forbid handling competitive tires, tubes or batteries (Fdg. 16, R. 179; Fdg. 12, R. 173-174; Fdg. 14, R. 176-177). An unknown number of the outlets bound by the last mentioned 2777 agreements are still further prohibited by oral agreements with the appellants from handling other competitive automotive accessories (Fdg. 18, R. 179).

The outlets covered by agreements purchased from appellants $66,000,000 worth of gasoline,

[4] See the district court's opinion at R. 101. There is no issue as to appellants' direct operation of service stations.

tires, tubes, batteries and other accessories in 1947. The following table details both the quantity volume and the approximate dollar volume of business done by the appellants and these outlets for that year and the year preceding it (Fdg. 20, R. 180).

	1946		1947	
	Quantity Volume	Dollar Volume	Quantity Volume	Dollar Volume
Gasoline	268,568,748 gal.	$48,342,374	320,257,350 gal.	$57,646,323
Lubricating Oils	6,067,782 gal.	3,246,263	6,268,206 gal.	3,353,490
Tires	179,462 units		213,304 units	
Tires and tubes		2,692,094		3,188,301
Tubes	138,174 units		197,400 units	
Batteries	43,078 units	352,464	63,126 units	669,829
Miscellaneous Accessories	2,375,162 units	687,557	2,526,114 units	988,469
		$55,320,752		$65,846,412

Appellants' sales of gasoline through dealers constituted 6.7% of the total taxable gallonage sold in 1946 in the Western area (R. 122, App. Br. 25). Appellants' company-operated service stations' sales in 1946 constituted 6.8% of the total taxable gallonage sold in the area (R. 122, App. Br. 25). Combining the percentage sold under agreements with the percentage sold in company-operated stations, appellants' retail sales amounted to 13.5% of the total sales in the area in that year. Taking their industrial sales into consideration, appellants' full percentage of the gasoline market in the area in 1946 was 23%. (Fdg. 25, R. 182, App. Br. 25).

Under the appellants' exclusive agreements and sales practices practically all sales of other products produced or sponsored by appellants were tied into gasoline sales. All but 742 of appellants'

agreements forbidding purchases of competitors' gasoline also forbid purchases of competitors' other petroleum products (Fdgs. 11-17, R. 172-179). Appellants dealer sales in 1946 of lubricating oil were 5% of the total taxable sales in that area (App. Br. 27). Adding sales by appellants' company-operated stations the percentage becomes 8.8% of that total (App. Br. 31). 2777 of the 7000 such gasoline and oil agreements prohibit the sale of competitors' tires, tubes or batteries (Fdg. 16, R. 179; Fdg. 12, R. 173-174; Fdg. 14, R. 176-177). Furthermore, appellants sell no tires, or batteries, to a dealer unless the dealer signs what is called a Dealer Agreement-TBA which restricts him not only as to tires, tubes and batteries, but as to gasoline and petroleum products as well (R. 1075, App. Br. 17, R. 176-177). Appellants' dealer sales of tires within the Western area in 1946 were 2% of total replacement tire shipments in the area (R. 123, App. Br. 27). Adding here the sales of appellants' company-operated stations the percentage becomes 3.9% (R. 123). Appellants' dealer sales of batteries in the Western area in 1946 were 1.8% of total replacement battery sales in the area (R. 123, App. Br. 28). Adding the sales of appellants' company-operated stations the percentage total is 4.6% (R. 123). Appellants will sell automobile accessories other than tires, tubes and batteries only to dealers who sell appellants' gasoline (R. 1075, App.

Br. 17). As we have said, a number of outlets who are bound by agreements to purchase no competitor's petroleum products, tires, tubes, or batteries, are still further bound by oral agreements to handle no competitor's other automotive accessories unless appellants are unable to furnish them (Fdg. 18, R. 179). There are no satisfactory figures for comparison of accessory sales.

Appellants' six major competitors have adopted similar exclusive-dealing programs (App. Br. 22-23). These six majors distribute through 20,502 dealer outlets and 383 company-operated outlets (App. Br. 20). Adding appellants' 5937 dealer outlets and 1063 company-operated outlets, they together with these six other majors distribute through 27,885, or 76%, of the total 36,500 retail gasoline outlets in the Western area (Fdg. 19, R. 179, 101, 1061-2, 1763-1777, 1064, App. Br. 20). These six companies together with appellants, the largest of all, now share 55% of the total taxable gasoline gallonage sold in the Western area in their sales through dealer-operated and company-operated retail outlets alone.[5]

The pertinent terms of the five types of written agreements currently used by appellants are:[6]

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[5] Appellants' six major competitors sold through retail outlets 1,709,874,556 gallons. Appellants sold through retail outlets 542,467,000 gallons. The total 2,252,341,556 represents 35.98% of the total taxable gallonage sold in the area. (App. Br. 20, 25, R. 123)

Adding only appellants industrial sales, the figure is more than 63% (R. 182, App. Br. 25). The record does not show the industrial sales of the six other majors.

[6] Figures on the number of agreements are based on chart dated March 12, 1947 (Fdg. 16, R. 179).

DEALER AGREEMENT (Fdg. 11, R. 172):[7]

* * * Dealer agrees to buy from [Standard], all of Dealer's requirements of petroleum products used or sold or bought to be used or sold by Dealer at ———. The petroleum products to meet Dealer's requirements hereunder shall be those brands of gasoline, lubricating oils, and other petroleum products sold by [Standard] to its dealers generally in Dealer's vicinity.

DISTRIBUTOR AGREEMENT (Fdg. 12, R. 173):[8]

Company [i. e., Standard] agrees to sell to Distributor, and Distributor agrees to buy from Company and stock and offer for sale all of Distributor's requirements of petroleum products used or sold or bought to be used or sold by Distributor in the conduct of his business on the premises hereinafter described. The petroleum products to meet Distributor's requirements hereunder shall be those brands of gasoline, lubricating oils and other petroleum products currently sold at service stations operated by Standard Stations, Inc., in Distributor's vicinity, and Distributor agrees not to store, handle, distribute, or sell any other brand or brands of petroleum products at or from the stations.

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[7] Appellants have 1,656 agreements with independent dealers in the form of the Dealer Agreement (Fdg. 16, R. 178; Govt. Ex. 1, R. 1301). This form of agreement came into use about 1938 (Fdg. 9, R. 171).

[8] Appellants have 556 agreements with independent dealers in the form of their Distributor Agreement (Fdg. 16, R. 178; Govt. Ex. 2, R. 1304). Agreements in this form came into use about 1934, and since 1944 have been gradually replaced and superseded by other forms of agreement (Fdg. 8-9, R. 171).

Company agrees to sell or consign to Distributor and Distributor agrees to purchase or receive from Company, and stock and offer for sale, all of Distributor's requirements of tires, tubes, and batteries used or sold or bought to be used or sold by Distributor on the premises above described. The tires, tubes and batteries to be supplied Distributor hereunder shall be Company's regular line of Atlas Tires, Atlas Tubes and Atlas Batteries currently sold at service stations operated by Company in Distributor's vicinity. Company will deliver to Distributor such other Atlas merchandise currently sold by Company at service stations operated by Standard Stations, Inc., that Distributor wishes to handle hereunder, in quantities necessary in opinion of Company to meet the station's trade requirements. Whether tires, tubes, batteries and other non-petroleum merchandise which Distributor handles hereunder shall be consigned or sold to Distributor shall depend on Company's current policies, but Company will allow Distributor the commissions or the equivalent thereof in differentials below Company's selling price therefor, as set forth in the attached schedule marked Schedule 'A' and hereby made a part hereof. This schedule may be modified from time to time by Company. All tires, tubes, and batteries sold or consigned to Distributor hereunder shall be sold by Distributor at not less than Company's authorized prices therefor * * *

PETROLEUM PRODUCTS AND EQUIPMENT AGREEMENT:[9]

(The provisions of this form with respect to the dealer's purchases of petroleum products are identical with those in the Dealer Agreement, *supra* (Fdg. 13, R. 175).

DEALER AGREEMENT TBA (Fdg. 15, R. 178):[10]

(The Dealer Agreement TBA requires the dealer to buy from Standard all its requirements of petroleum products, defined as "those brands of such products generally sold by [Standard] to its dealers" (Fdg. 14, R. 176).)

Company [i. e., Standard] agrees to sell or consign to Dealer and Dealer agrees to purchase or receive from Company, and stock and offer for sale, all Dealer's requirements of tires, tubes, and batteries used or sold or bought to be used or sold by Dealer on said premises. The tires, tubes and batteries to be supplied Dealer hereunder shall be those lines supplied by Company from time to time to its dealers generally. Company will deliver to Dealer such other merchandise currently sold by Company that Dealer wishes to handle hereunder, in quantities necessary in opinion

[9] Appellants have 912 agreements in the form of its Petroleum Products and Equipment Agreement (Fdg. 16, R. 178). The form of agreement came into use in 1944 (Fdg. 9, R. 171).

[10] Appellants have 2,221 agreements with dealers in the form of their Dealer Agreement TBA (Fdg. 16, R. 178). This form came into use about 1944 and has gradually replaced and superseded the Distributor Agreement form (Fdg. 9, R. 171). Additionally, the language of the form with respect to automotive accessories differs only slightly from that contained in the Distributor Agreement.

of Company to meet Dealer's requirements at said premises. Whether tires, tubes, batteries and other non-petroleum merchandise which Dealer handles hereunder shall be consigned or sold to Dealer shall depend on Company's current policies but Company will allow Dealer the commissions, or the equivalent thereof in differentials below Company's selling price therefor, as set forth in the attached Schedule 'A'. Company may modify this schedule from time to time. All tires, tubes, and batteries sold or consigned to Dealer hereunder shall be sold by Dealer at not less than Company's authorized retail prices therefor * * *

SUBLEASE AGREEMENT (Fdg. 15, R. 178):[11]

Lessee shall handle and sell on the leased premises only such petroleum products as are sold lessee by lessor and agrees not to store, handle, sell or distribute on or from said premises any petroleum products of any description other than those petroleum products sold to lessee by lessor (Fdg. 15, R. 178).

In addition to the 7,145 written agreements appellants have oral agreements with 742 independent dealers pursuant to which the dealer agreed to handle and sell only appellants' gasoline (Fdg. 17, R. 179). Appellants also entered into various other oral agreements, the number of which is unknown, with some of the dealers with whom they

[11] Appellants have 1,800 Sublease Agreements with dealers. 1,798 of these are used in conjunction with other forms of agreement (Fdg. 16, R. 178; Gov't Ex. 5, R. 1311).

had executed "Dealer Agreements TBA" and "Distributor Agreements." Such oral agreements provide that the dealer will acquire from appellants, so long as they are able to furnish them, such automotive accessories, other than tires, tubes, and batteries, as he might require for use or sale at the retail outlet operated by him. (Fdg. 18, R. 179).

Appellants "persuaded, induced and influenced" independent dealers to enter into the foregoing written and oral agreements by various means and methods. Among these means and methods were (a) lending money without interest or at less than current interest rates, (b) making gifts of money, (c) making loans portions of which were later forgiven, (d) buying equipment from the dealer and thereafter furnishing new equipment without charge or at less than cost. In many instances such action was taken by appellants for the purpose of displacing competitive products then being handled by the dealer or for the purpose of precluding the acquisition of the dealer's outlet by a competitor of appellants. (Fdg. 22, R. 181).[12]

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[12] Appellants' assignment of error (Assigned 3(h), R. 1869) to this finding is in flat contradiction of the admissions of their answer. The complaint charged (Complaint, Par. 33, R. 9) in almost the precise language of the finding that appellants used the methods set forth above to persuade, induce, and influence independent dealers to enter into agreements. Appellants' answer (Answer, Par. 24, R. 94) admitted that in certain cases they employed those methods and that they may have been one of the reasons why dealers entered into agreements. Appellants denied only that they had made gifts of money or forgiven portions of loans "save in rare instances," none subsequent to about May 1, 1946.

The district court found "the intent, purpose and effect of the exclusive supply provisions of the written and oral agreements . . . have been to prevent the 'independent dealer' operating under said agreements from handling any 'petroleum products,' tires, tubes, batteries and miscellaneous accessories other than those supplied or sponsored by [appellants]" (Fdg. 31, R. 185).

The appellants policed the market to enforce the agreements. Appellants' representatives looked through dealers' stations to find whether they were handling competitive products, threatened to replace dealers who handled competitive products, and in fact did so (R. 495-511, 559, 713-719, 722, 745-747, 758, 766, 775, 805-807, 811-812, 815-816). Suppliers were actually deprived of sales and many which had made sales to specified stations before they entered into appellants' agreements could not sell them afterward (R. 301-302, 306-307, 309, 339-344, 346-353, 356-362, 388-390, 396-412, 469-474, 484-485, 518-544, 571-575, 583-589, 612-613, 620-624, 634-637, 657-661, 663-666, 669-670, 677-678, 685-691). The district court made several findings based on such evidence. It found specifically, that "numerous manufacturers and producers of 'petroleum products' and 'automotive accessories' located both inside and outside of the States of the 'Western area' other than those producers and manufacturers whose products are marketed by defendants, are prepared to and have attempted to sell their respective brands of 'petroleum prod-

lets', tires, tubes, batteries, and miscellaneous accessories to 'independent dealers' within the Western area who have entered into the written and oral agreements . . . ." (Fdg. 29, R. 184.) It likewise found that "in many instances direct sales representatives of manufacturers and producers have unsuccessfully attempted to sell 'independent dealers' who were and still are parties to the written or oral agreements" (Fdg. 29, R. 184). Finally it found that "the direct flow of interstate commerce has been effected by the written and oral agreements . . . . by denying the manufacturers of competitive products the right to sell the 'independent dealers' at the retail outlets" (Fdg. 32, R. 185).

The agreements entered into by appellants have directly affected and unreasonably restrained the course of interstate commerce in petroleum products and automotive accessories (Fdg. 32, R. 185). The written and oral agreements contemplate the movement and distribution of goods in interstate commerce. There is a constant flow in interstate commerce of the products produced and distributed by appellants. (Fdg. 23, R. 181).

The petroleum products sold and distributed in the Western area by appellants comprise both bulk products and packaged goods. Appellants supply bulk products to dealers in the Western area by various transportation methods, including tank cars, tank trucks, barges, and tankers. In some instances appellants supply dealers by transporta-

tion directly from their refineries to the dealer's storage tanks. In most instances appellants transport their products to various bulk plants owned and operated by them throughout the Western area for distribution from such plants to the 23 distribution divisions into which they have divided the area. (Fdg. 26, R. 182).

Packaged oils and greases sold by appellants are packaged at its three refineries in California, or at packaging plants at Willbridge, Oregon and Point Wells, Washington. The packaged oils and greases are distributed by appellants directly from these points to the four distribution divisions into which they have divided the Western area. (Fdg. 27, R. 183).

Automotive accessories, purchased by appellants from various concerns located both within and without the Western area, are shipped by these manufacturers to eight accessory warehouses maintained by appellants. These eight warehouses are located, three in California, two in Washington, and one each in Arizona, Oregon and Utah. From these warehouses, appellants distribute the accessory products to the dealers at their retail outlets in the Western area. In all but two instances the accessory warehouses serve dealers in more than one State. (Fdg. 28, R. 183.)

Holding Below and Relief Granted

The court below concluded that appellants' written and oral agreements have had the necessary and

intended effect "of denying the independent dealers access to competitors' products and of locking out such dealers from the sources of products originating in interstate commerce" (Concl. 7, R. 187), and "of denying manufacturers and suppliers of petroleum and automotive accessories [13] competitive to those manufactured or sponsored by [appellants] access to a substantial number of potential outlets for their products in the seven states of the Western area" (Concl. 8, R. 187). It concluded also that "the number of outlets and the volume of business in petroleum products and automotive accessories foreclosed to competition by the [appellants'] written and oral agreements . . . . is substantial whether considered comparatively or not" (Concl. 9, R. 187).

The court's holding was that appellants' exclusive dealing contracts constitute an unreasonable restraint of trade in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act (R. 130).

On appellants' motion to reconsider on the ground that the case was controlled by this Court's decision in *United States* v. *Columbia Steel Co.*, 334 U. S. 495 (decided on the same day the district court's opinion was filed), the court filed a supplemental opinion analyzing that decision, and concluding that it was without application to this case (R. 159-167).

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[13] Gasoline and tires, tubes and batteries are included in these terms (Fdgs. 5C and D, R. 169-170. See *supra*, p. 6).

The district court granted the relief prayed for by the Government. It adjudged unlawful and void all provisions in the agreements, written and oral, between appellants and the dealers, which bound the dealers to buy all their requirements of petroleum products and automotive accessories from appellants. It enjoined appellants from enforcing such provisions in existing agreements, and from entering into further agreements whereby they sold petroleum products or automotive accessories to any dealer upon the condition that the dealer would not sell at his retail outlet products other than those sold or sponsored by appellants (R. 188-193).

SUMMARY OF ARGUMENT

I

Appellants' exclusive dealing contracts completely destroy the opportunity of other sellers of similar products to compete for the patronage of the dealer outlets contractually tied to appellants. In addition, they deprive those outlets of the opportunity to buy in a competitive market. The only issue is whether the restraint of trade effected by these contracts is unreasonable since they affect a substantial segment of the market. Agreements which fence off from competition a substantial segment of the market constitute in effect a compulsory boycott of competitors. Moreover, the purpose for which they were employed in this case is the same as in the boycott cases. Appellants

possess a power comparable to that present in *International Salt Co.* v. *United States*, 332 U. S. 392, and the effects of appellants' agreements have been far more substantial. *United States* v. *Columbia Steel Co.*, 334 U. S. 495, does not reject the view that these agreements as here used are unreasonable because of the substantial commerce affected. On the contrary, since appellants' competitors were shut off from a large segment of the market the agreements in this case fall squarely within the test laid down in that case. Appellants' request for an extensive economic inquiry to establish the claim that the agreements are reasonable because they permit wider distribution at lower prices is itself unreasonable, disregards the effect on competitors and dealers, and was rejected in *Standard Oil Co.* v. *United States*, 221 U. S. 1. That some of appellants' competitors also use exclusive dealing contracts emphasizes the suppressive effect of such agreements on competitors who do not or cannot use them, and points up the unreasonableness of such contracts. In *Federal Trade Commission* v. *Staley Co.*, 324 U. S. 746, 753, this court termed an assertion that competitors' like actions established legality a "startling conclusion". And it is no defense to unfair competitive practices to say that rivals might protect their trade by adoption of equivalent practices. *Federal Trade Commission* v. *Winsted Co.*, 258 U. S. 483, 493.

II

Exclusive dealing agreements are within the purview of Section 3 of the Clayton Act since in practical effect they are agreements not to purchase the goods of a competitor. *International Machines Co.* v. *United States*, 298 U. S. 131. Likewise within the purview of Section 3 are such agreements even where confined to all purchases at a particular outlet since they are within the literal language of the section, its purpose and policy.

Since the Clayton Act reaches in its incipiency conduct which violates the Sherman Act, proof of violation of the latter Act by exclusive dealing contracts establishes a violation of the Clayton Act. Even if no violation of the Sherman Act were established, the facts here nevertheless establish a violation of Section 3 of the Clayton Act. In addition, in one of their affirmative defenses appellants stated they would be excluded from the market if they were forbidden to use exclusive dealing contracts while their competitors were permitted to do so. If the largest distributor in the industry would be so affected, the consequences of these agreements upon those who do not or cannot use them are clear. A further consequence is to induce other competitors also to utilize exclusive dealing contracts, thus further foreclosing the market. This admission and other facts which have been established sufficiently demonstrate that the effect of the agreements may be substantially

to lessen competition or tend to create a monopoly. Section 3 of the Clayton Act requires no more.

III

The judgment should not except from its operation contracts made between the appellants and dealers located in California. The court has jurisdiction to enjoin local acts which restrain the free flow of interstate commerce into the State of California. The practice covered by the exemption granted in *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211, was not one which restrained interstate commerce. In any event, it is doubtful if the Court would today grant such an exemption. *Federal Trade Commission* v. *Cement Institute,* 333 U. S. 683.

ARGUMENT

Both the appellants and the Government agree that the court below held that the exclusive dealing contracts entered into by the appellants with approximately 6,000 independent dealers throughout the Western area constitute an unreasonable restraint of trade in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act because those restraints affect a substantial segment of interstate commerce.

This was the theory of the Government's case in the court below. Because this theory was sometimes advanced in the form of a contention that these restrictions were *per se* violative of the Sherman and Clayton Acts, some misunderstanding

arose in the mind of the trial judge as to the exact nature of the Government's theory. The trial court's impression apparently was that the Government urged that these contracts in and of themselves, irrespective of the extent of their effect on interstate commerce, were in violation of Section 1 of the Sherman Act and Section 3 of the Clayton Act. Because the trial judge had this impression there are portions of his opinion which echo the views expressed by him throughout the trial rejecting this theory which he attributed to the Government. But the Government intended to advance no such theory and we agree with the appellants that the basic question in this case is whether, as the District Court held, these practices restrain substantial segments of interstate commerce and are therefore unreasonable and in violation of the sections of the Acts in question.

We start then, as do the appellants, with the trial judge's ruling that the appellants' exclusive dealing contracts which affect the distribution of gasoline, petroleum products and automotive accessories are violations of the Sherman and Clayton Acts because they unreasonably restrain a substantial part of the interstate commerce in this field.

We urge in Point I of this argument that the restrictive practices here involved so affect such a substantial segment of interstate commerce that they violate Section 1 of the Sherman Act. We

proceed in Point II to show that these restrictive practices, affecting commerce as they do, were violative of Section 3 of the Clayton Act. In Point III we show that no part of the judgment was beyond the jurisdiction of the court.

I

Foreclosure of Competition From a Substantial Segment of the Market by Exclusive Dealing Contracts Constitutes an Unreasonable Restraint of Trade Prohibited by Section 1 of the Sherman Act

The approximately 8,000 agreements, written and oral, obligating approximately 6,000 independent retail outlets to purchase and stock for resale to the consuming public only the products of the appellants, completely destroy the opportunity of other sellers of similar products to compete for the patronage of those outlets. In addition, they deprive those outlets of the right to buy, and to derive the benefits that flow from buying, in a competitive market. Clearly, therefore, they completely suppress competition to the detriment of both the competing suppliers and the captive outlets. The only issue is the extremely narrow one of whether such a series of exclusive dealing contracts "unreasonably" restrains trade, as that term has been used since *Standard Oil Co. v. United States*, 221 U. S. 1.

"* * * the interest of the consumer is not all that determines the 'reasonableness' of the contract 'in restraint of trade.' It is also unlawful to

exclude from the market any of those who supply it * * * and it is no excuse for doing so that their exclusion will result in benefits to consumers or to the producers who remain" (*Fashion Originator's Guild* v. *Federal Trade Commission*, 114 F. (2d) 80, 85 (C. A. 2), affirmed 312 U. S. 457). A fundamental purpose of the Sherman Act is to prohibit "contracts" which "probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage in trade and commerce—in a word to preserve the right of freedom to trade" (*United States* v. *Colgate & Co.*; 250 U. S. 300, 307). Freedom to trade includes unrestricted access to the market. What does it avail a trader to have for sale a better gasoline, a better battery, or a better mousetrap if access to the market is denied to him! What protection is there for a buyer if he is denied the advantages of purchasing in a market in which unfettered competition exists! Recognizing this, the Court said, in *United States* v. *Yellow Cab*, 332 U. S. 218, 226, that the Act "is designed to sweep away all appreciable obstructions [in the channels of interstate trade] so that the statutory policy of free trade might be effectively achieved."

Agreements which fence off a substantial segment of the market from competing suppliers and which deny the fenced-in outlets the opportunity to trade with fenced-out suppliers directly impinge upon the right of freedom to trade and are,

therefore, in their very nature, in derogation of the concept of free competition in an open market.

Where, as here, there are thousands of such agreements they constitute a restraint similar in character to boycotts—which have been declared unreasonable without any inquiry as to injury or power to injure. *Eastern States Retail Lumber Dealers' Assn.* v. *United States*, 234 U. S. 600; *Fashion Originators' Guild* v. *Federal Trade Commission*, 312 U. S. 457. By precluding the captive outlets from patronizing competing suppliers, appellants' agreements accomplish a compulsory boycott. The boycotting nature of these agreements becomes more apparent both as their number increases and as other competitors resort to similar measures. In this manner, retail outlets are progressively closed to all remaining competitors, particularly those who will not or cannot adopt such tactics. The effect from the point of view of these competitors is no different from that which would follow if the closed outlets were to agree among themselves to deal only with a few large suppliers.

Appellants give short shrift to the boycott cases on the ground that the intent in those cases differs from the intent in the present case. But the difference is not so great as to warrant such cavalier treatment. The district court found as a fact that the "intent, purpose and effect" of the exclusive supply provisions of appellants' agreements were to prevent independent dealers from handling

products other than those offered for sale by appellants (R. 185). The independent dealers were "persuaded, induced, and influenced" to enter into the agreements by financial gifts or concessions from appellants. Appellants in many instances took such action for the express purpose of displacing competitive products handled by the independent dealer or of precluding the acquisition of the dealer's outlet by a competitor of appellants. (R. 181.) Appellants' extension of these agreements over a substantial segment of the available retail outlets with such intent (R. 185) has the necessary consequence of injuring competitors. Since appellants must be presumed to have intended the necessary and foreseeable consequences of their acts (*United States* v. *Griffith Amusement Co.*, 334 U. S. 100, 104), the specific intent characteristic of boycott cases is present here.

The present case is also closely analogous to *International Salt Co.* v. *United States*, 332 U. S. 392. There the Salt Company leased 900 patented salt dispensing machines on the condition that the lessee purchase from the lessor its supply of salt for use in the machines. The annual purchases of such salt amounted to approximately $500,000. There was no showing of the percentage of the market which this amount represented. The Court stated that "it is unreasonable *per se* to foreclose competitors from any substantial market" (p. 396), and held that the Salt Company

was not entitled to introduce evidence to show "whether the restraint was unreasonable within the Sherman Act, or substantially lessened competition, or tended to create a monopoly in salt within the Clayton Act" (p. 396).

Appellants distinguish the *Salt* case on the ground that the Salt Company possessed monopoly power by virtue of its ownership of patents and this power was used as a leverage over the salt market. The present case is not substantially different. In the *Salt* case, since competing salt dispensing machines were available (*Morton Salt Co.* v. *Suppiger*, 314 U. S. 488), leverage over the market was not absolute. While appellants do not have absolute monopoly power, nevertheless, they do control the largest segment of the market, 23%, which, when considered in the light of the fact that the remaining 77% is shared by at least 80 other suppliers, necessarily gives them an economic power which tends toward monopoly power.[14] The trial court found that appellants "have persuaded, induced, and influenced" independent dealers to enter into exclusive dealing contracts by various means, such as "(a) lending money without interest or at rates below current interest rates; (b) by making loans, portions of which were later forgiven; (c) by making gifts of money; (d) by buy-

[14] Appellants supply 23% of the gasoline sold in the Western area (R. 182). The next 6 largest companies supply some 40% (at App. Br. 20, R. 122). The balance is supplied by the remaining competitors, 70 of whom have an annual volume of over 1,000,000 gallons (App. Br. 20, 21).

ing equipment from the independent dealer and thereafter furnishing new equipment to said dealer without charge, or by (e) selling equipment to said dealer at less than cost" (R. 181). In addition, appellants admit that their "capital investment in the land and equipment of dealer stations is approximately $16,500,000" (Br. 10, fn. 11). They also admit that in many cases they install certain equipment for these dealers such as pumps, tanks, air compressors, air and water wells, hoists, buildings, canopies, rest rooms, lubricating oil equipment, drinking fountains, special lighting, painting and signs (Br. 9). These facts directly relating to the challenged agreements amply demonstrate the scope of appellants' power.

The difference in the source of the power, be it patent power, buying power, economic power, or otherwise, is immaterial. In *United States* v. *Griffith*, 334 U. S. 100, it was held that exhibitors of motion pictures, with theatres in 85 towns, in 53 of which there were no competing theatres, had violated the Sherman Act in negotiating contracts for film exhibition which restricted the competitive opportunities of other theatre owners. In reaching this conclusion the Court quoted the language of the *Salt* case, that it was unreasonable to foreclose competitors from any substantial market, and added that "the antitrust laws are as much violated by the prevention of competition as by its destruction" (p. 107). It also stated that large-scale buying could not "be used to stifle competi-

tion by denying competitors less favorably situated access to the market" (p. 108). We think the *Griffith* case, as well as the *Salt* case, makes it clear that it is the existence of power and not the manner in which it is gained that is the crucial factor.

Even apart from the larger number of exclusive dealing contracts, and the larger dollar volume of trade here than in the *Salt* case, and the percentage of the industry, here involved, appellants' agreements have had a substantially more severe impact upon competing suppliers and retailers than the exclusive dealing provisions in that case. The Salt Company had never refused to lease its machines in instances where the lessee objected to the tying clause. *United States* v. *International Salt Co.*, 6 F. R. D. 302, 306. Here, appellants will not do business except upon their own terms. They will not sell their gasoline, tires, tubes, batteries or accessories to any independent retailer unless he will agree to deal exclusively in appellants' gasoline.[15] In the *Salt* case, the lessor did not enforce the exclusive dealing provision (332 U. S. 392). In the present case the exclusive dealing provisions were policed and enforced (*supra*, p. 16). The leases in the *Salt* case permitted the lessee to purchase sale from other suppliers if

[15] Appellants' policy forbids sales of gasoline to an independent dealer who handles other brands of gasoline (R. 1127). Furthermore, appellants will not sell automotive accessories to a dealer who does not handle its gasoline (*Idem.*). Appellants will not sell tires, tubes and batteries to a dealer unless the dealer will sign a Dealer Agreement TBA (R. 1075).

the prices of such other suppliers were lower than the prices of the Salt Company (332 U. S. 396-397). There is no comparable provision in appellants' agreements. There, the Salt Company endeavored to pre-empt a segment of the market only in respect of sales of salt, a product which it produced. Appellants' practices are more extensive. Appellants produce only petroleum products, but, using them as leverage, appellants foreclose the market in a wide line of non-petroleum products—tires, tubes, batteries, and other types of goods which they themselves do not even manufacture, but buy from various manufacturing concerns and which have in common only that they are produced for consumption in conjunction with automotive vehicles. Appellants thus move into and foreclose a market in products which they themselves do not produce. The foothold which their production of gasoline, greases, and oils affords them is exploited by their exclusive dealing arrangements to restrain trade in automotive accessories generally.

The similarity between the boycott cases and the *Salt* case and the case at bar impels the conclusion that the restraint in this case constitutes at least as substantial and detrimental an obstruction to commerce as existed in those cases. There, as this Court pointed out in *United States* v. *Columbia Steel Co.*, 334 U. S. 495, the restraints were held unreasonable without reference to the quan-

tum of commerce involved. We do not have to go so far as to contend that a similar rule should apply in the present case. However, we submit that in view of the character of appellants' restraint, proof of an effect upon a substantial segment of commerce is sufficient to render the restraint unreasonable without any further showing.

The recent decision in *United States* v. *Columbia Steel Co.*, 334 U. S. 495, is not inconsistent with our view of the law. There the Government sought to enjoin as violative of both Sections 1 and 2 of the Sherman Act the acquisition by the United States Steel Company of the assets of Consolidated Steel Corporation, an independent fabricator of steel on the West Coast. The Government contended that the acquisition would exclude competitors from a substantial segment of the market represented by Consolidated's purchases of rolled steel products. In rejecting this argument, the majority of the Court determined that Consolidated had accounted for only 5 million dollars, or three percent of the annual demand for rolled steel products within the area of its operations (p. 527), and therefore concluded that the foreclosure of the market was unsubstantial. The approach of the majority of this Court made clear that its examination of the facts was directed to a determination as to the substantiality of the restricted competition, and that it was only upon this basis that it concluded there was no "unreasonable restraint of trade." There is nothing in

the opinion to suggest that, had a substantial segment of the market been foreclosed, the majority of the Court would nevertheless have found it necessary to conduct further inquiry into the "reasonableness" of the restraint. The acquisition would not have been justifiable on the ground that it would be advantageous to United States Steel, or that the public would be benefited and lower prices result (*Infra,* p. 36). Had a substantial segment of the market been foreclosed, the conclusion would have followed, in the light of existing precedents, that such a foreclosure was unreasonable and beyond justification.

The basis upon which the majority distinguished the *Yellow Cab* case illustrates the correctness of this view. In *Yellow Cab,* the complaint charged a *combination and conspiracy* to restrain trade with the *intent and purpose* of monopolizing the cab business in certain cities and, on a motion to dismiss, this allegation was accepted as true. On this ground, the majority opinion in *Columbia Steel* remarked that in the *Yellow Cab* case the amount of commerce was immaterial, and, of course, it followed from this fact that "Nothing in the *Yellow Cab* case supports the theory that all exclusive dealing arrangements are illegal *per se*" (p. 523).[15a] We do not contend otherwise.

The *Columbia Steel* case said, in substance, that

[15a] This statement simply echoes the holding in *Pick Mfg. Co.* v. *General Motors Co.,* 299 U. S. 3, to which the court below referred (R. 106), that an exclusive dealing contract is not illegal *per se.*

the legality of the acquisition of Consolidated was to be determined by whether the "effect of such control is to unreasonably restrict the opportunity of competitors to market their products" (p. 524). We think it an ineluctable conclusion that the obstructions to commerce in this case must necessarily unreasonably restrict the opportunity of appellants' competitors, and especially the smaller competitors who among them supply only 37 per cent of the gasoline in the Western area (R. 122, 182, at App. Br. 20).[16] These agreements particularly affect the smaller competitors because appellants' major competitors have also fenced off retail outlets as private preserves of their own. Markets are not limitless and any substantial foreclosure therefrom obviously has serious consequences on a vendor's ability to market. That this is so would appear as patent an economic fact as the proposition "that the competitive opportunities of certain merchants were injured when they had to pay * * * substantially more for their goods than their competitors had to pay," a proposition which this Court described as "obvious" in *Federal Trade Commission* v. *Morton Salt Co.*, 334 U. S. 37, 46. To require the extensive economic inquiry requested by appellants in order to establish such an elemental economic proposition as that for which we contend would seem senseless, and accomplish nothing but the erection of a useless

[16] This figure ignores the industrial sales of appellants' six major competitors which the record fails to disclose.

and wasteful impediment to the effective enforcement of the antitrust laws. As this Court said in the *Morton Salt* case "It would greatly handicap effective enforcement of the Act to require testimony to show what we believe to be self evident * * *" (p. 50).

There is nothing in the *Columbia Steel* case which requires the consideration in this case of the additional and highly speculative economic inquiry appellants demand. The purpose of this additional inquiry, reduced to its lowest common denominator, is to determine whether the exclusive outlet is the most economical method of distributing gasoline to the public. It is plain that this line of argument is without avail, and does not establish the "reasonableness" of any trade restraint. *Standard Oil Co.* v. *United States*, 221 U. S. 1, 48, in first enunciating the "rule of reason," held irrelevant arguments that the alleged restraints had in fact produced a wide distribution of products at prices below that which would have otherwise prevailed. The Sherman Act provided that competition should be the law of trade, and the Act is not to be judicially repealed by asserting that competition is economically wasteful, and that trade-restraining practices produce economic benefits. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 221; *United States* v. *Union Pacific R. Co.* 226 U. S. 61, 88. We find nothing in the *Columbia Steel* case which suggests that this long established rule has been changed.

The appellants introduced testimony which they contend demonstrates the reasonableness of their exclusive dealing contracts but which actually lends weight to the Government's position. This evidence was introduced for the purpose of showing that their major competitors employed exclusive dealing contracts, the theory being that the widespread nature of these practices suggests their reasonableness. To support factually this line of argument, appellants introduced the testimony of officials of their six largest competitors.[17] Through the testimony of these witnesses, appellants elicited that their respective companies each sold petroleum products and automotive accessories in most or all of the seven Western States, and that each entered into leases and agreements with independent dealers containing explicit provisions or affirmatively contemplating that the dealers should sell only the products of the single oil company.[18]

The theory that trade practices, otherwise illegal, may be validated by pointing to the fact that

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[17] The competitors, and their officials who appeared, are: Tide Water Associated Oil Company (McCall, R. 825); Shell Oil Co., Inc. (Hugill, R. 863); General Petroleum Corporation (Christy, R. 871); The Texas Company (Wharton, R. 876); Union Oil Company of California (Seeley, R. 879; Rogers, R. 884); and Richfield Oil Corporation (Will, R. 885).

[18] Appellants concede in their brief that "the dealer contracts and sublease arrangements of Standard's principal competitors are in general similar to those of Standard." (Br. 23). These leases and agreements were introduced as Appellants Exs. E and F (Tide Water Associated Oil Company, R. 1518, 1524); H and I (Shell Oil Co., Inc., R. 1538, 1554); K and L

competitors also engage in them was considered a "startling conclusion" by this Court in *Federal Trade Commission* v. *Staley Co.*, 324 U. S. 746, 753. There, it was held that a seller may not justify his use of a basing-point system of pricing, otherwise illegal under the Clayton Act, by showing that other competitors are violating the law by maintaining like systems. Monopolizing practices cannot be justified on the ground that a business rival is a "vicious monopoly" which can only be fought by resort to similar practices. *United States Tel. Co.* v. *Central Union Tel. Co.*, 202 Fed. 66, 74-75 (C. A. 6), certiorari denied, 229 U. S. 620; see, also, *Farmers Livestock Commission Co.* v. *United States*, 54 F. 2d 375, 379 (E. D. Ill.).

Nor is it true that all competitors of appellants pursue similar exclusive dealing practices. There are many independent sellers of petroleum products and automotive accessories which do not resort to such arrangements.[19] Similarly, it is no

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(General Petroleum Corporation, R. 1569, 1578); N and O (The Texas Company, R. 1590, 1603; Q and R (Union Oil Company of California, R. 1611, 1615); and U Richfield Oil Corporation, R. 1621).

[19] e.g., The MacMillan Petroleum Corporation endeavors to sell its oils and greases to all types of resale accounts (R. 314). Appellants' Ex. II (R. 1675) lists 79 companies which sold over 1,000,000 taxable gallons of gasoline in the Western area in 1946, and their Ex. GGG (R. 1864) listed 69 sellers of their own brand of lubricating oil. There is no proof that any of these sellers insists on exclusive outlets. Appellants Ex. FFF (R. 1863), showing the extent to which competitive automotive accessories are in fact surreptitiously sold at appellants' outlets, establishes that competitors are willing to sell on a nonexclusive basis.

answer to say that all competitors might resort to such practices. *Federal Trade Commission* v. *Keppel & Bro.*, 291 U. S. 304, 312-313; *Federal Trade Commission* v. *Winsted Co.*, 258 U. S. 483, 493.

If the "reasonableness" of a trade restraint could be established by the widespread nature of its use, anomalous results would ensue. Trade restraints, otherwise illegal, would be validated if they had been so widely copied as to constitute a genuine menace to trade. A small group of powerful traders, each engaging in restraints of trade, might validate their practices by each pointing to those of the others—figuratively, all lifting one another by the bootstraps.

The officials of appellants' six largest competitors, who were called as witnesses by appellants, in the main furnished: (1) figures disclosing the respective numbers of independent dealers with whom each had exclusive-dealing arrangements during each of the years 1937 to 1946, inclusive; and (2) figures disclosing the gallonage or dollar value of various petroleum products and automotive accessories sold by each at retail during the years 1937 to 1946, inclusive.[20]

[20] The request, in the form of a questionnaire, sent to each of the six competitors is Appellants' Ex. B (R. 1515). The responses of the six were introduced as appellants' Exs. C (Tide Water Associated Oil Company, R. 1516), G (Shell Oil Co., Inc., R. 1534), J (General Petroleum Corporation, R. 1566), M (The Texas Company, R. 1589), P and S (Union Oil Company of California, R. 1609, 1618A, and T (Richfield Oil Corporation, R. 1619).

Presumably, these compilations of figures were designed to show that each of the six leading rivals of appellants had not suffered competitively over the ten-year period; that this was demonstrable by the fact that each had about as many exclusive outlets, relative to those of appellants, in 1946 as in 1937; and that each had increased gallonage or dollar volume of their products during the period.

We fail to see how any showing as to the maintenance of the competitive position of the six leading competitors of appellants, each of whom admittedly pursues the same restrictive practices as appellants do, establishes the reasonableness of such practices. The purpose of the antitrust laws is not to preserve the positions of powerful competitors all of whom engage in similar trade restrictions. Disastrous effects to trade are to be anticipated from an acceptance of any claim by appellants that their exclusive dealing arrangements are "reasonable" because powerful competitors follow the same practices. For, though there are undoubtedly a small number of economically powerful petroleum producers which, like appellants, seek exclusive outlets, it is also true that there are many producers of the variety of petroleum products and automotive accessories in which appellants are interested who lack the ability to obtain their own exclusive outlets. The competition of the many would soon be lost if appellants' practices should be considered legal solely because a few other powerful

rivals also pursue them. The existence of similar restraints by powerful competitors does not establish reasonableness. In *United States* v. *Paramount Famous Lasky Corp.*, 282 U. S. 30, a contract in use by more than half the industry was held unreasonably in restraint of trade, and the fact that it was evolved after six years of discussion and experimentation was deemed to have no bearing on its "reasonableness."

II

Foreclosure of Competition From a Substantial Segment of the Market by Exclusive Dealing Contracts Constitutes a Substantial Lessening of Competition and a Tendency to Monopoly Prohibited by Section 3 of the Clayton Act

Section 3 of the Clayton Act makes it unlawful for any person to sell or contract to sell goods on condition that the purchaser shall not use or deal in the goods of a competitor of the seller where the effect of such sale or contract of sale or such condition "may be to substantially lessen competition or tend to create a monopoly." The court below found that appellants' agreements came within and were in violation of this Section. It found that appellants had entered into agreements for the sale of petroleum products and automotive accessories upon condition that the purchaser not deal in the goods of a competitor (R. 185), and concluded that their effect was to "substantially lessen competition and tend to create a monopoly in the sale and

distribution of petroleum products and automotive accessories" (R. 186). Appellants challenge both the conclusion that the agreements are within the purview of Section 3 and the conclusion that they have the prohibited effect.

Appellants contend that their contracts do not come within the purview of Section 3 of the Clayton Act because the independent dealer agrees only to buy from them "all his requirements" (Br. 82-85). That an agreement requiring a purchaser to purchase his entire requirements from a vendor is an agreement that the purchaser shall not deal in the goods of a competitor was firmly settled in *International Machines Corp.* v. *United States*, 298 U. S. 131. That corporation leased its machines on condition that the lessee use therein only cards purchased from it. In meeting an argument similar to that here made, this Court said (p. 135):

> Little need be said of the contention that the condition of appellant's leases does not infringe these prohibitions. It is true that the condition is not in so many words against the use of the cards of a competitor, but is affirmative in form, that the lessee shall use only appellant's cards in the leased machines. But as the lessee can make no use of the cards except with the leased machines, and the specified use of appellant's cards precludes the use of the cards of any competitor, the condition operates in the manner forbidden by the statute.

The same rule was enunciated in *International Salt Co.* v. *United States*, 332 U. S. 392, and *United*

Shoe Machinery Co. v. *United States*, 258 U. S. 451.[21]

Appellants further contend that their exclusive dealing agreements do not come within the purview of Section 3 of the Clayton Act because the agreements are confined in terms to the particular outlet for which the dealer contracts to purchase. These agreements are within the literal language of the section as agreements "that the * * * purchaser * * * shall not * * * deal * * * in the goods * * * of a competitor or competitors of the * * * seller." Appellants point to nothing in the purpose or policy of the Act which would require that the language be given other than a literal interpretation, but rely upon *Federal Trade Commission* v. *Sinclair*, 261 U. S. 463. There this Court set aside the Commission's order which required the Sinclair Company to cease from its practice of leasing to retail dealers underground tanks and pumps at nominal prices upon condition that the equipment should be used only in conjunction with gasoline supplied by Sinclair. The holding that the tying agreements did not come within the letter of the Clayton Act is distinguishable because there the agreements not to buy the goods of a competitor

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[21] Lower court cases which have rejected the argument appellants here make are: *Radio Corporation* v. *Lord*, 28 F. (2) 257 (C. A. 3), certiorari denied, 278 U. S. 648; *Judson L. Thomson Mfg. Co.* v. *Federal Trade Commission*, 150 F. (2d) 952 (C. A. 1), certiorari denied, 326 U. S. 776; *Signode Steel Strapping Co.* v. *Federal Trade Commission*, 132 F. (2d) 48 (C. A. 4).

were limited to goods for use in a single pump and did not either in terms or practical effect apply to the entire outlet. As the Court said in *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707, 722, the agreements in the *Sinclair* case simply "restricted use of a distributor's gasoline tanks." While the Commission found in the *Sinclair* case, as appellants point out (Br. 83), that the practical effect of the tying contracts was to close the outlets to competitors, the Court specifically rejected that conclusion (pp. 473-474). In this case it is admitted that the intended effect was to close the entire outlet. In any event, this phase of the *Sinclair* decision appears inconsistent with the more recent decisions of this Court in the *International Salt* and *International Machines* cases, *supra*, where the conditions in the leases of machines were that the lessee would use in connection with them only the supplies of the lessor. The lessees were free to lease competing machines for use side by side at the same location and to purchase identical supplies for use in them from other suppliers.[22]

Appellants finally contend that the exclusive dealing contracts are not in violation of Section 3 because it was not shown that their effect "may be to substantially lessen competition or tend to create a monopoly in any line of commerce." Since the

[22] There were available competing machines in both the *International Machines* case (298 U. S. at p. 132), and in the *International Salt* case. See *Morton Salt Co.* v. *Suppiger Co.*, 314 U. S. 488.

Clayton Act was intended to curb in their incipiency agreements within the sphere of the Sherman Act (*Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, 356), it follows that proof of a violation of the Sherman Act proves a violation of the Clayton Act (*International Salt Co.* v. *United States, supra*).

Even assuming, *arguendo*, that a violation of Section 1 of the Sherman Act has not been established, it is nevertheless clear that appellants' agreements are in violation of the Clayton Act. That Act does not in terms require that the vendor possess a monopoly power to use as a lever before the contracts may be condemned and no such requirement has been read into it. *Standard Fashion Co.* v. *Magrane-Houston Co., supra.* Nor does the Act or decided cases support the proposition (App. Br. 93) that the prohibited effect can be established only by proof that competitors have been driven out of business, that their size or power has declined, or that the number of their customers or their volume of business has progressively declined. The condemned effect may be shown by other evidence. *International Salt Co.* v. *United States*, 332 U. S. 392. The Government's proof in this case, as we have shown, conclusively demonstrates a very substantial lessening of competition. However, it is not necessary that the evidence show any more than that the effect of appellants' contracts "may" be to substantially lessen competi-

tion. Here appellants admit that such is their effect. One of their affirmative defenses involved the claim that appellants would be excluded from the market if they were forbidden to use exclusive dealing contracts while their competitors were permitted to do so (R. 96). That appellants, the largest distributor in the industry, would be so affected dramatically demonstrates the position of appellants' smaller competitors who do not now use them. The consequence of their use by one competitor, therefore, is to compel others to utilize them with the result of further foreclosing the market to the prejudice of those who do not or cannot use exclusive dealing contracts *Signode Steel Strapping Co.* v. *Federal Trade Commission*, 132 F. (2d) 48 (C. A. 4). In the *Signode Steel* case, one of twelve manufacturers of strapping machines leased its machines upon the condition that the lessee not use in the machine any supplies not purchased from the company. The company's principal competitors followed the same practice. In discussing the effect of the company's practice on competition the court said (p. 54):

> * * * And as pointed out by the Commission, the effect of the trade practice of the company is materially increased by reason of the fact that it forms a part of the cumulative effect of the practices of the three leading companies in the tying machine industry, all three of whom were subject to orders by the Commission.

Appellants' admission of the obvious effect of its exclusive dealing contracts confirms the view of the trial court that "we are dealing not with probabilities but with actualities" (R. 165) and serves as a complete answer to appellants' defense that these contracts have been in use for a long time and have not had the prohibited effect. Its admission further demonstrates that there can be no free competition in the Western area until appellants and their competitors have released their captive markets.

Federal Trade Commission v. *Sinclair*, 261 U. S. 463, is not to the contrary. There, the holding was that the tying agreements were not within the purview of the Clayton Act and were not an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act because "the record does not show that the probable effect of the practice will be unduly to lessen competition" (p. 475). This conclusion was based in part upon the fact that dealers were not only free to enter into similar arrangements for the same location with competing suppliers, but were also free to purchase and install their own tanks and pumps "by investing a comparatively small sum" (p. 474). The Court said "the devices are not expensive—$300 to $500—can be purchased readily of makers and, *while convenient, they are not essential*" [Italics supplied] (p. 475). The opinion would indicate that the Court was keenly aware

of the fact that if it sustained the order and permitted an independent dealer to serve the public through a Sinclair pump a brand of gasoline other than Sinclair, it would in effect be cooperating in the perpetration of a fraud upon the public. There is, of course, no similar problem here—sustaining the judgment does not authorize the perpetration of a fraud. It is one thing to permit an agreement that the gasoline pump may not be used to dispense the gasoline of another company and quite another to claim that an entire outlet must be confined to a single brand in order to prevent consumer deception.

III

The Judgment Properly Enjoins Appellants' Exclusive Dealing Contracts With Their California Dealers

Appellants' contention that the court should have exempted from the operation of the judgment their exclusive dealing contracts with dealers located in California requires little comment. It has long been settled that local acts which have the effect of restraining interstate commerce may be enjoined. *Loewe* v. *Lawlor*, 208 U. S. 274; *Local 167* v. *United States*, 291 U. S. 293; *United States* v. *Frankfort Distilleries, Inc.*, 324 U. S. 293; *Mandeville Farms* v. *Crystal Sugar Co.*, 334 U. S. 219. The closing of retail outlets in the State of California to out-of-State vendors clearly affects interstate commerce by restraining the flow of goods into the State which but for the agreements would

ordinarily compete for the trade of such outlets. In this connection the district court specifically found "that numerous manufacturers and producers of 'petroleum products' and 'automotive accessories' located both inside and outside of the States of the 'Western area', other than those producers and manufacturers whose products are marketed by defendants, are prepared to and have attempted to sell their respective brands of 'petroleum products', tires, tubes, batteries and miscellaneous accessories to 'independent dealers' within the Western area who have entered into the written or oral agreements * * *" (Fdg. 29, R. 184). It likewise found that "in many instances direct sales representatives of manufacturers and producers have unsuccessfully attempted to sell 'independent dealers' who were and still are parties to the written or oral agreements." (Fdg. 29, R. 184). Finally it found that "the direct flow of interstate commerce has been effected by the written and oral agreements : . . by denying the manufacturers of competitive products the right to sell the 'independent dealers' at the 'retail outlets.'" (Fdg. 32, R. 185).

Addyston Pipe & Steel Co. v. *United States*, 175 U. S. 211, upon which appellants rely, is not in point. There the Court exempted local price-fixing combinations from the operation of the judgment. The exempted combinations did not restrain interstate commerce because producers

located without the State could nevertheless ship their goods into the State for sale in competition with the producers who were parties to the local price-fixing combinations. Moreover, it is doubtful if such an exemption would be granted today. *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the district court should be affirmed.

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purchasers for a substantial quantity of commodities of like grade and quality. Is illegality to be *conclusively inferred*, irrespective of what the effect might *actually* be? Or suppose that the same rule here laid down is applied to corporation A which acquires "the whole *or any part of the stock*" of corporation B, a competitor. Is illegality to be *conclusively inferred*, irrespective of what the effect might *actually* be? If, as Representative Floyd pointed out,[8] the language of the "substantially-lessen-competition" clause in Sections 2 and 3 was taken over from Section 7 of the Act, then is it reasonable to assume that the same criteria of interpretation must be used in dealing with all three sections? If the Court's interpretation of Section 3 is applied to Sections 2(a) and 7, the area of innovation and confusion is immeasurably expanded.

V.

The Court's Interpretation of Section 3 of the Clayton Act Works a Hardship Not Only on Suppliers but on a Multitude of Small Dealer Purchasers.

It is respectfully urged that the Court re-examine the problem from the standpoint of the individual dealer. The Court's opinion recognizes the advantages of requirements contracts to a small buyer, like the service station dealer.[9] But at the conclusion of the opinion the Court says:

> "If in fact it is economically desirable for service stations to confine themselves to the sale of the

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[8]See footnote 5.

[9]The Court's opinion says (p. 13):

> "Requirements contracts, on the other hand, may well be of economic advantage to buyers as well as to sellers, and thus indirectly of advantage to the consuming public. *In the case of the buyer*, they may assure supply, afford protection against rises in price, enable long-term planning on the basis of known costs, and obviate the expense and risk of storage in the quantity necessary for a commodity having a fluctuating demand."

petroleum products of a single supplier, they will continue to do so though not bound by contract, and if in fact it is important to retail dealers to assure the supply of their requirements by obtaining the commitment of a single supplier to fulfill them, competition for their patronage should enable them to insist upon such an arrangement without binding them to refrain from looking elsewhere." (pp. 20, 21)

This, it is respectfully urged, does not solve the problem of the small dealer to whom an assured future supply is a matter of vital importance. In his business, survival may often depend on an assured future supply, especially in times of scarcity.

Of course there was competition with Standard for the patronage of the dealers. This fact was demonstrated. (See Brief of Appellants, pp. 87 to 89.) A dealer was free to contract with Standard, or any one of a large number of other suppliers. A dealer was free to select the kind of Standard contract he desired.

But having once made up his mind to contract with Standard, rather than some other supplier, and desiring a requirements contract *in order to be assured of a future supply*, how would it be legally possible for the dealer to say to Standard, "I will contract to buy all my requirements of gasoline from you over a period of six months. Of course you agree to sell me that gallonage. However, if I find I want to purchase any of my requirements from one of your competitors, I shall be free to do so." Such an arrangement would be no contract at all. A contract to buy and sell, not only obligates the seller to sell, *but obligates the buyer to purchase.* Otherwise there is no enforceable contract. If, as is the case with a great many dealers, a requirements contract is desired by the dealer to guarantee him an assured future supply, the dealer must agree to buy his requirements from the contract supplier if he is to be in a position to legally enforce an obligation

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IN THE

Supreme Court of the United States

October Term, 1948.

No. 279.

279

STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court for the Southern District of California

PETITION FOR REHEARING.

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STANDARD OIL COMPANY OF CALIFORNIA and STANDARD STATIONS, INC., *Appellants,*

v.

UNITED STATES OF AMERICA, *Appellee.*

PETITION FOR REHEARING.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Appellants, Standard Oil Company of California and Standard Stations, Inc., respectfully petition for a rehearing upon the grounds hereinafter stated.

Appellants believe that there are errors in the Court's opinion; that these errors will inevitably have disastrous repercussions; and that the public interest involved, in addition to the hardship to appellants and numerous service station dealers, should prompt the granting of a rehearing.

The issue is stated in the opinion at the outset as follows:

> "The issue before us, therefore, is whether the requirement of showing that the effect of the agreements 'may be to substantially lessen competition' may be met simply by proof that a substantial portion of

commerce is affected or whether it must also be demonstrated that competitive activity has actually diminished or probably will diminish." (p. 6)

The Court adopts the first alternative.

The Court's conclusion that Standard's contracts violate Section 3 of the Clayton Act seems to be based upon the fear that should the government be required to prove (as the statute plainly requires) that the effect of the contracts may be to substantially lessen competition, this would be a matter presenting "serious difficulties" (p. 15) and would require a "standard of proof . . . . . most ill-suited for ascertainment by courts" (p. 16). The Court states that to require the government to show that competition might be lessened would be to "stultify the force of Congress' declaration that requirements contracts are to be prohibited wherever their effect 'may be' to substantially lessen competition" (p. 20).

I.

In Interpreting Section 3 of the Clayton Act,[1] the Court Has Misapprehended the Congressional History of That Section.

To support its interpretation of Section 3 the Court adverts to the Congressional history of that section.

The Court's opinion states that the qualifying language in Section 3 "was added only *after a flat prohibition of tying clauses and requirements contracts had passed both Houses of Congress*" (p. 19).[2] It is respectfully urged that the Court is misinformed.[3]

Section 4 of the original Clayton bill as it passed the House was much like present Section 3 of the Clayton Act, except that it did not contain the *qualifying clause* "where the effect of such . . . contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce," and except that it contained a criminal

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[1]Section 3. "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce." (38 Stat. 731; 15 U. S. C. 14.)

[2]Italics throughout this petition have been supplied.

[3]We do not mean misinformed by counsel. Neither counsel for the government nor counsel for appellants either in their briefs or in oral argument mentioned the Congressional history of this section.

penalty. (See Senate Report No. 698, 63d Cong. 2d Session, p. 56.)

When this Clayton bill reached the Senate it went to the Senate Committee on the Judiciary. This committee reported the bill to the Senate with certain changes, *i. e.*, the insertion of the words "or contract for sale," the insertion of the words "whether patented or unpatented," and the elimination of the criminal penalty. (See Senate Report No. 698, 63d Cong. 2d Session, p. 56.)

On the floor of the Senate *this section was entirely eliminated from the bill* (see Vol. 51, Part 14, Cong. Rec., pp. 13849, 14223, 14272, 14273) and the Senate *adopted a substitute section,* drawn by Senator Walsh, applicable *only to patented articles* and prohibiting the use of tying clauses in connection with patented articles upon criminal penalties, the criminal penalty provision being added by an amendment offered by Senator Reed (see Vol. 51, Part 14, Cong. Rec., pp. 14273, 14274, 14275, 14276 and the remarks of Senator Reed in Vol. 51, Part 16, Cong. Rec., p. 15818). This amendment was offered to meet the decision of this Court in *Henry v. A. B. Dick Company,* 224 U. S. 1[4] (see Vol. 51, Part 16, Cong. Rec., p. 15818; also Henderson, "The Federal Trade Commission," pp. 30 and 31).

Thus, up to the time that the bill went to the Conference Committee of both Houses, the House had approved a section similar to present Section 3 of the Clayton Act, except that it omitted the qualifying clause and contained

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[4]This decision had upheld the validity of a *tying clause* whereby a manufacturer of a *patented* mimeograph machine had required licensees to use with such machine only such stencil paper, ink, and other supplies as were purchased from such manufacturer.

a criminal penalty, but the Senate had approved a different section *applicable only to patented articles* and containing a criminal penalty.

The Conference report (see Senate Document No. 585, 63d Cong. 2d Session, p. 4) inserted for the first time the qualifying clause, eliminated the criminal penalty, and the section then went to both Houses of Congress and was passed in the form in which Section 3 now appears in the Act.

The Court's opinion further states that the "conferees responsible for adding that language [*i. e.*, the qualifying clause] were at pains, in answering protestations that the qualifying clause seriously weakened the section, to disclaim any intention seriously to augment the burden of proof to be sustained in establishing violation of it" (p. 19).

It is respectfully urged that a re-examination of the discussion in Congress of this section after it came from the Conference Committee will not support this conclusion. The debate in the Senate was extensive. (See Vol. 51, Part 16, Cong. Rec., p. 15818, *et seq.*) The proceedings in the House were not so lengthy. (See Vol. 51, Part 16, Cong. Rec., p. 16317.) It appears that the primary purpose of this particular section of the bill was to denounce "tying contracts in general. This is the device by which a manufacturer controlling a patented or staple article compels all who purchase or lease it to agree to purchase other goods or supplies from the seller, thus aiding him in restraining the trade of rivals and enabling him to create a monopoly." (Remarks of Senator Reed, Vol. 51, Part 16, Cong. Rec., p. 15819.) The reasons for

the addition of the qualifying clause in the Conference Committee were explained by Representative Floyd, who was one of the managers in the Conference Committee on the part of the House. From his explanation it appears that this qualifying clause was put in Sections 2 and 3 because it had been previously approved by both the House and the Senate in Section 7, and that this language originated from the discussion in the opinion of this Court in the *Addyston* case (175 U. S. 211).[5]

It is earnestly submitted that the interpretation of Section 3 now announced by this Court was not within the contemplation of those who enacted this measure, and that this will be shown by a re-examination of the proceedings of Congress after the bill left the Conference Committee. Obviously the limits imposed upon a petition for rehearing preclude any such attempt at re-examination in this petition.

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[5]Representative Floyd said:

"We have been criticized for injecting or inserting certain words into sections 2 and 3 in conference. Where did those mysterious words 'substantially lessen competition or tend to create a monopoly' originate? They were incorporated in section 8, the holding-company provision of the bill, as it passed this House. They passed muster in the Senate of the United States and were retained in the holding-company provision as it passed the Senate and were retained in conference. In modifying and changing sections 2 and 3, so as to make the acts prohibited therein unlawful, without making them penal, it became necessary to change the wording of each, in other respects. We took the language that had been already approved by both the House and the Senate in another section, the one relating to holding companies, and applied it to sections 2 and 3, the latter corresponding to our section 4, so that the three sections, namely, sections 2, 3, and 7 of the conference report, are in harmony now, all dealing with the question of contracts, the same principle being applied to each one of them.

"The gentleman from Minnesota [Mr. Volstead] criticizes this language and criticizes these provisions, claiming that we are in some way interfering with the operations of the Sherman anti-trust law; at least he fears we are. Not at all. That

II.

The Court's Interpretation of Section 3 of the Clayton Act Gives No Efficacy to the Words "Lessen Competition." It Interprets the Section as if Congress, Instead of Saying "Where the Effect of Such . . . Contract . . . May Be to Substantially Lessen Competition," Had Used the Words "Where Such Contract Affects a Substantial Part of Commerce."

It is respectfully urged that Section 3 does not say that the contracts are invalid if they "affect" a substantial portion of commerce. It says *"where the effect of such . . . contract or such condition, agreement or understanding may be to substantially lessen competition . . ."* The word "substantially" is used in the section to modify

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language did not originate with our committee. That language originated from a discussion in the opinion of the Supreme Court of the United States in the case of the Addyston Pipe & Steel Co. against United States. The court, in discussing this very question of contracts, uses this language. I quote:

"'But it has never been, and in our opinion ought not to be, held that the word included the right of an individual to enter into private contracts upon all subjects, no matter what their nature and wholly irrespective, among other things, of the fact that they would, if performed, result in the regulation of interstate commerce and in the violation of an act of Congress upon that subject. The provision in the Constitution does not, as we believe, exclude Congress from legislating with regard to contracts of the above nature while in the exercise of its constitutional right to regulate commerce among the States. On the contrary, we think the provision regarding the liberty of the citizen is, to some extent, limited by the commerce clause of the Constitution, and that the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially, and not merely indirectly, remotely, incidentally, and collaterally, regulate to a greater or less degree commerce among the States.'" (Vol. 51, Part 10, Cong. Rec., pp. 16317, 16318.)

the important words *"lessen competition." The Court's opinion gives no scope or weight to these words.*

Yet Congress must have intended these words to have some efficacy. The reasonable conclusion is that Congress by these words intended that there must be a factual inquiry to determine whether the contracts might have this prohibited "effect."

Congress in enacting this "effect" clause of Section 3, did not intend that a defendant should be denied all right to offer proof to show what the "effect" of the contract in question might be. If this had been the intent of Congress, it could easily have been expressed—not by the words which were used—but by saying: "where such contract affects a substantial portion of commerce."

The Court's interpretation of Section 3 alters the plain import of the "effect" clause of the section. It substitutes for the words *"where the effect of such . . . contract . . . may be to substantially lessen competition,"* the words (not found in the section) *"where such contract affects a substantial portion of commerce."*

III.

The Court in Applying Its Interpretation of Section 3 of the Clayton Act Indulges in Inferences Adverse to Standard, but Denies Standard the Right to Rebut Such Inferences.

The opinion recognizes that there has been no improvement in Standard's competitive position during the time it has used requirements contracts; that Standard is beset by the most vigorous kind of competition; that the duration of Standard's contracts is not excessive; and that Standard does not dominate the market (p. 15).

Yet the Court then proceeds to draw certain inferences adverse to Standard's position. Thus the Court says that "*it is possible* that" Standard's "position would have deteriorated but for the adoption" of the contracts (p. 15). Again it says that "*it would not be farfetched to infer* that their effect has been to enable the established suppliers individually to maintain their own standing and at the same time . . . to prevent a late arrival from wresting away more than an insignificant portion of the market" (p. 16).

But surely, if *inference* is to be drawn upon for the purpose of showing that the contracts had the prohibited effect, Standard should have been *permitted to rebut such inference*. Yet here the District Court (A) excluded evidence which would have rebutted such inference,[6] and

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[6]The District Court said that it would sustain objections to any attempt by Standard to show what would be the effect on competition of the elimination of the requirements contracts generally or what change would occur in the over-all competitive picture through the elimination of such contracts. (See Brief of Appellants, pp. 43 to 47.)

(B) wholly disregarded evidence which was introduced for the purpose of showing the "effect" of the contracts. The District Court dealt with Standard's operations *in a vacuum*, despite evidence received and evidence offered but excluded.

To raise inferences against Standard and then to deny Standard the right to rebut such inferences is to deny a litigant the very essentials of justice.

If, as pointed out by Representative Floyd, the *Addyston* case was responsible for the use of the words "where the effect . . . may be to substantially lessen competition . . . ," then it *is perfectly clear that Congress did not intend to bar proof showing what the "effect" might be.* Thus, in the *Addyston* case (175 U. S. 211) it was said (p. 245):

> "It is the *effect* of the combination in limiting and restricting the right of each of the members to transact business in the ordinary way, as well as its effect upon the volume or extent of the dealing in the commodity, that is regarded. *All the facts and circumstances are, however, to be considered* in order to determine the fundamental question—whether the necessary effect of the combination is to restrain interstate commerce."

The reason for denying Standard the right to rebut the inferences raised against its contracts seems to be that to do so would be to require a "standard of proof . . . most ill-suited for ascertainment by courts" (p. 16). Yet is this not a task which the Courts have coped with successfully over many years and in many cases under the Sherman Act? Surely a trial court is no more ill equipped to determine whether contracts may have the effect of substantially lessening competition than it is to determine whether business practices, often detailed and complex, are in restraint of trade under the Sherman Act's rule of reason.

IV.

The Court's Interpretation of Section 3 of the Clayton Act Disregards the Court's Previous Decisions Interpreting Identical Language ("Substantially Lessen Competition") Found in Sections 2(a) and 7 of the Clayton Act.

It is respectfully urged that the Court's interpretation of the "effect" clause in Section 3 of the Clayton Act is in conflict with the interpretation given by the Court to identical language found in Sections 2(a) and 7 of the Clayton Act.[7]

In *Federal Trade Commission v. Morton Salt Co.*, 334 U. S. 37, dealing with Section 2(a), it was apparently recognized that there must be some factual showing that the alleged discriminatory discounts might substantially lessen competition.

In *International Shoe Co. v. Commission*, 280 U. S. 291, dealing with Section 7, the Court expressly approved *Standard Oil Co. v. Federal Trade Commission*, 282 Fed. 81, 87, which had held that a factual showing was necessary in order to show substantial lessening of competition.

What is the effect of the Court's opinion herein upon a case involving either Section 2(a) or 7 of the Clayton Act (where identical statutory language is used)? Suppose the same rule here laid down is applied to one who "directly or indirectly" makes a different price to different

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[7]Section 2(a) of the Clayton Act (38 Stat. 730 as amended by 49 Stat. 1526; 15 U. S. C. sec. 13) makes price discriminations under certain conditions unlawful "where the effect of such discrimination *may be substantially to lessen competition* or tend to create a monopoly

Section 7 of the Clayton Act (38 Stat. 731; 15 U. S. C. sec. 18) forbids certain stock acquisitions where the effect "*may be to substantially lessen competition* . . . or tend to create a monopoly

of the contract supplier to sell him his requirements. The dealer cannot have a requirements contract which will leave it optional with the dealer to buy from some third party and still have an enforceable obligation against the contract supplier.

So the Court's remark that "if . . . it is important to retail dealers to assure the supply *of their requirements* by obtaining the commitment of a single supplier to fulfill them, competition . . . . should enable them to insist *upon such an arrangement* without binding them to refrain from looking elsewhere," presents nothing in the way of a legally practicable solution. How can the dealers legally insist upon "such an arrangement" (*i. e.*, requirements contracts) and still retain the right of "looking elsewhere"? The Court strikes down a practice fraught with vital benefits to the small dealers, and offers them nothing which will preserve such benefits.

Respectfully submitted,

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Certificate of Counsel.

We, counsel for petitioner, certify that the foregoing petition is presented in good faith and not for delay, and that in our opinion it is well founded.

Marshall P. Madison

MARSHALL P. MADISON.

John M. Hall

JOHN M. HALL.